# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1925

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## No. 401

THE UNITED STATES, APPELLANT

vs.

READING COMPANY

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## No. 402

READING COMPANY, APPELLANT

vs.

THE UNITED STATES

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APPEALS FROM THE COURT OF CLAIMS

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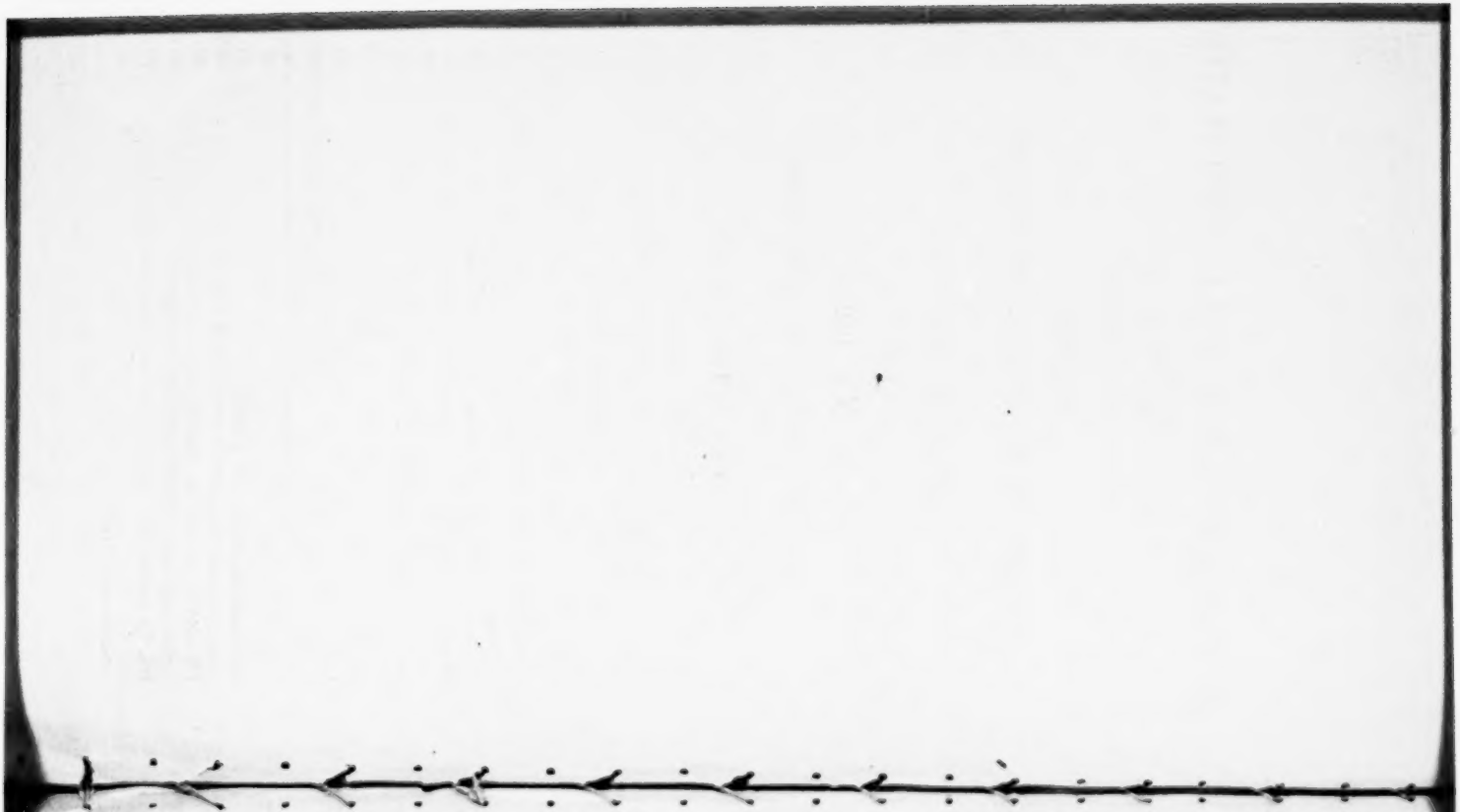

1 In the Court of Claims

PHILADELPHIA AND READING RAILWAY COMPANY

v.

THE UNITED STATES

No. 34747

I. *Petition*

Filed Dec. 3, 1920

*To the Honorables, the Chief Justice and Judges of the Court of Claims:*

Your petitioner respectfully shows unto your honors the following facts:

I

Petitioner is a corporation organized and existing under the laws of the State of Pennsylvania, and has always borne true faith and allegiance to the United States and has never voluntarily aided or abetted its enemies.

For many years prior and up to the first day of January, 1918, petitioner operated, and since the first day of March, 1920, it has operated a system of railways in said State, doing business as a common carrier of passengers and freight for hire and reward under tariffs duly published and filed by it and by its connections, with petitioner's concurrence, with the Interstate Commerce Commission.

II

During said times there were in effect upon all the lines party to the transportation hereinafter mentioned certain baggage and special baggage-car tariffs of the carriers, by the latter of which it was provided, in substance and effect that, under certain circumstances,
2 parties paying not less than twenty-five adult fares amounting to not less than $25 for the movement, might become entitled, at the convenience of the carrier, to a special baggage car free for the transportation of certain of their effects, and if baggage cars were not available freight box cars might be substituted to serve the same uses at the option of the carrier.

III

The tariffs hereinbefore referred to were compiled in accordance with law and with the rules and regulations of the Interstate Commerce Commission, which require separate tariffs for freight and passenger business, and they are typical of tariffs long prevailing

generally throughout the country to which practically all railway lines are parties. Some of said tariffs may be susceptible of the interpretation that they provide for free cars for other transportation than theatrical paraphernalia, but they have always been intended, understood and construed to apply only to the transportation in the baggage service of theatrical paraphernalia, or, at most, in addition to theatrical paraphernalia, of personal and sample baggage and those certain specified articles which, though not strictly baggage, it was nevertheless provided would be handled in the baggage service, under terms and conditions, for the convenience of passengers, such as dogs, baby carriages, bicycles and so forth, and up to the month of April, 1918, it had never been contended that they allowed for the transportation in the baggage service of articles essentially freight, in favor of which no provision had been made. The restrictions imposed in said tariffs do not give an undue preference to anybody over the United States, nor do they constitute an unlawful discrimination against the United States in failing to allow the free transportation of the camp equipment and military sup-
3 plies, which are of a character essentially freight, in connection with movements of troops.

## IV

With respect to the articles pertaining to and accompanying bodies of troops, and composed of tents, ambulances, wagons, caissons, ammunition, tools and other articles peculiar to military impedimenta, and sometimes called company, or battalion or regimental "property" or "camp equipment," it has always been claimed by carriers and conceded by the Quartermaster General of the United States Army that such shipments were essentially freight and were so to be treated in settlements with carriers for their transportation. For many years the Quartermaster General has issued periodically a publication entitled "Manual for Quartermaster Corps," and of the edition thereof published and made effective in December, 1916, and still in full force and effect, paragraphs 3441, 3443, 3445, 3453, 3494, 3498 and 3500, amongst others, recognize the clear distinction between public property and equipage or army baggage on the one hand and the baggage entitled to free transportation, or transportation in the baggage service, on the other hand.

## V

On April 29, 1918, in a settlement made with the Louisville & Nashville Railroad Company by the Auditor for the War Department for the transportation of the impedimenta, consisting of eight carloads, accompanying a troop movement of 587 men from Montgomery to Mobile, Alabama, the auditor held that all of said shipment except three escort wagons was entitled to free transportation under the special baggage-car tariff of the carrier; and on

4 claimant's appeal to the Comptroller of the Treasury the comptroller held that the entire shipment was entitled to free transportation, and he disallowed the amount allowed by the auditor. (24 Comp. Dec. 774.) Said decision has been followed by the disbursing and accounting officers of the Government ever since, without regard to the difference in phraseology of the different tariffs, and appeals to the comptroller have been uniformly unsuccessful. With respect to the tariffs indisputably limiting free baggage cars to theatrical paraphernalia, he has held that notwithstanding such a limitation the United States was nevertheless entitled to the free use of such cars for the transportation of its camp equipment and troop property, as otherwise there would be an undue and unreasonable preference and an unlawful discrimination against the United States. Much of the freight for which free carriage has been claimed could not possibly be loaded into baggage cars.

## VI

For some time prior to July 1, 1915, there had been in effect in each of the different passenger association territories of the carriers agreements, duly executed by the proper representatives of the carriers and the authorized officers of the War and Navy Departments and of the Marine Corps, the purpose of which was to agree upon and define the rights of the parties, to simplify accounting, to expedite settlements and to insure the speedy transportation of troops and their supplies upon terms that were deemed equitable to both the carriers and the Government; and in said agreements reduced rates were allowed on military transportation, it being provided in all of them as follows:

5 "RULES AND REGULATIONS

"(4) The fares authorized herein shall be five per cent (5%) less than the properly constructed net fares between competitive points, with a maximum reduction of $ [differing in the different territories] per capita.

* * * * * * *

"(10) One hundred and fifty (150) pounds of personal effects of officers and men properly checkable as baggage will be transported without charge for one person, but this does not include company, battalion, regimental or Government property. Personal baggage in excess of the weight stated, when provision for transportation of same is specifically made in U. S. Army, U. S. Navy and U. S. Marine Corps transportation request. will be charged for at the excess baggage rates less lawful land-grant deductions.

"When company, battalion, regimental or Government property is moved on passenger trains, it shall be subject to adjustment for each movement."

Said agreements were renewed from time to time (including July 1, 1916), until superseded by interritorial military arrangements, made effective January 1, 1917, which was a revised and consolidated agreement executed by the proper representatives of carriers throughout the entire country and the authorized officers of the Marine Corps and of the War and Navy Departments, and which provided as follows:

"iii

"TRAFFIC COVERED BY THIS ARRANGEMENT

"The net fares, allowances and routes in connection therewith, authorized hereunder, are applicable exclusively for the transportation of officers and enlisted men and others connected with the United States Army, United States Navy and United States Marine
6 Corps, for whom the United States is lawfully entitled thereto and when traveling on transportation requests of the issues of the United States Army, United States Navy and United States Marine Corps and at United States Government expense only.

"iv

"NET FARES AND ALLOWANCES

"(1) (*a*) The fares applicable under this arrangement will be the lawful commercial fares as on file with the Interstate Commerce Commission from starting point to destination at time of movement (see exceptions, Section V), less lawful land-grant deductions properly established, less five per cent (5%), the five per cent allowance not to exceed the maximum allowances or exceptions as specified in Section VI. Government fares so established will apply to all military traffic as described in Section III, including special train and special car movements as well as individual and party movements. (See Section XI.)

"(*b*) Proportions will not be used in any case in the construction of fares.

* * * * * * *

"xv

"BAGGAGE

"(1) One hundred and fifty (150) pounds of personal effects, properly checkable as baggage, under the tariff of the initial carrier, will be transported without charge for each person. Personal baggage in excess of the free allowance stated when provision for the transportation of the excess baggage is specially made in United States Army, Navy or Marine Corps transportation requests and is paid for by the United States Government, will be charged for at the regular excess baggage rate, based upon the net individual fare.

When provision is not made in the transportation requests for
7 the transportation of excess baggage, collection will be made from the traveler at the regular commercial rate for weight in excess of the free allowance stated. Excess baggage charges will not be subject to allowances applicable in connection with the fares for tickets under this arrangement. Baggage regulations in other respects than above will be in accordance with the tariff of the initial carrier checking the baggage in each case.

"(2) Company, battalion, regimental or Government property is not included in the above."

## VII

By the agreements prior to the interterritorial military arrangements it was intended, and they were construed, to provide that the transportation of impedimenta accompanying troops should be paid for as separate transactions, under the freight tariffs of carriers according to their provisions with reference to the character of service furnished, as had been the long established practice, and settlements were made with carriers on that interpretation of said agreements. The intent and effect of paragraph XV of the interterritorial military arrangements was to provide specifically that the transportation of impedimenta was not covered by the baggage tariffs of carriers.

Said interterritorial military arrangements effective January 1, 1917, was promulgated to carriers by the committee which made it in their behalf with the statement that "This interterritorial military arrangement is but an extension of the one which became effective July 1, 1916," and by the Quartermaster General, U. S. Army, copies were issued to quartermaster officers with the following explanation:

"WAR DEPARTMENT,
*Washington, March 3, 1917.*

"(1) With reference to agreement entered into by this office under authority of the Secretary of War (see A. G. O. 2238747) with various railroad lines, there are enclosed copies of new arrangements effective January 1st, 1917, covering military travel within Central Passenger Association territory and interterritorial military arrangement covering travel between various sections of the United States, also one copy of southeastern military arrangement No. 2. The new agreements are along the same lines as the old ones; some disputed points which have been the subject of correspondence have been cleared up and are therefore published in the new arrangements."

Petitioner and all the other carriers participating in the transportation hereinafter mentioned were parties to the aforesaid agreements, which were never denounced by either side until superseded by succeeding agreements carrying the provisions the same as those which have been quoted, and the said interterritorial military ar-

rangements is still in full force and effect, and its provisions have been faithfully observed by carriers generally, including petitioner. Under its operation the Government has paid substantially five per cent less than it otherwise would have paid for an enormous volume of passenger transportation, whether the travel was of single individuals, or of groups, regiments or divisions. In many instances the movements of large bodies of troops were not accompanied by shipments of any considerable amount of impedimenta, and movements of individuals and groups were seldom if ever accompanied by such shipments. The said agreement, as a whole, is believed to have operated economically for the Government, and its
9 concessions, particularly the concession of five per cent on passenger fares, has resulted in saving to the United States very large sums of money.

Wherefore petitioner alleges that said baggage and special baggage-car tariffs did not allow for the free transportation of company, battalion, and regimental property, camp equipment and military supplies at the rate of one car for every 25 men in the accompanying troop movements, or at all; but that if said tariffs were otherwise applicable they were made inapplicable by the terms of contracts which have been executed and of which the United States have received the benefits.

## VIII

At various times during the years 1916 and 1917 petitioner in connection with other railway lines, at the instance and request of the proper officers of the United States Army, transported from other points to points on petitioner's line, large shipments of freight, some of which moved in connection with bodies of troops.

For the passenger transportation concerned in said movements, the regular transportation requests were issued and payment was made to the initial carrier of rates that were substantially five per cent less than the rates that would have been due and payable except for the concession of five per cent to the Government in said military agreements. For the accompanying freight movements regular Government bills of lading were issued in conformity with the directions contained in the quartermaster's manual set forth in paragraph IV, the said shipments being described as company, battalion or regimental property, camp equipment, and in some instances, in greater detail.

10 ## IX

Petitioner was the last carrier of said shipments and as such last carrier rendered its bills for the freight service to the disbursing quartermaster, U. S. Army, Washington, D. C., which bills were based upon the current published freight classifications of the carriers. The disbursing quartermaster did not pay any of said bills

as rendered, but paid some of them as if the shipments had consisted of emigrant moveables, under current rulings of the Comptroller of the Treasury. When the disbursing officers' accounts were examined by the Auditor for the War Department, additional deductions were made by the auditor, who applied the ruling that the Government was entitled to a free car for every 25 men in accompanying passenger movements, and on petitioner's refusal to remit the amount of same the auditor made equivalent deductions from subsequent bills of petitioner. In other instances original settlements were made on the basis of a carload free for every 25 men and the excess, if any, paid for as emigrant moveables; so that, with respect to every item herein complained of, final settlement was made on the basis, first, of deduction of one car for every 25 men, and second, reduction of the excess cars, if any, to the emigrant moveables basis. Many carloads of such things as artillery and horses have been claimed entitled to free carriage under the baggage tariffs.

The aggregate amount of underpayments to claimant resulting from said deductions and reductions is the sum of $31,878.87. An itemized statement of the claim is contained in an appendix hereunto attached and made part of this petition.

11 X

Petitioner respectfully shows to the court that the military impedimenta accompanying the bodies of troops hereinbefore referred to was not in fact emigrant moveables or theatrical paraphernalia, nor of similar character, nor was it transported under substantially similar circumstances and conditions with either; nor was said impedimenta personal or sample baggage, nor did it consist of the articles for the handling of which in the baggage service any provision was made in the baggage tariffs, but that, on the contrary, it was essentially freight and entitled to be treated as such; and furthermore, that by contract of shipment as freight shipment, as well as by the contract made by said military agreements and by the receipt uniformly of the substantial benefits under the same the Government has waived any rights it otherwise might have had to the free carriage of military impedimenta in the baggage service.

Premises considered, petitioner demands judgment against the United States in the sum of $31,878.87, no part of the same having been paid and petitioner's right thereto not having been transferred or assigned.

PHILADELPHIA AND READING
RAILWAY COMPANY,
By LOUIS T. MICHENER,
*Its Attorney in Fact.*

[Sworn to by Louis T. Michener; jurat omitted in printing.]

*Philadelphia & Reading Railway Company, accounting department—Claim account of baggage allowance for each 25 persons in troop movement—Balances paid on emigrant movables basis*

| Company Bill No. | Government B/L. No. | Date | From— | To— | Amount | Deducted by Government | References to settlement |
|---|---|---|---|---|---|---|---|
| 2-73 | 9651 | 2-13-1917 | El-Paso, Texas | Phila., Pa | $26,257.76 | $18,361.15 | Certificate 50753. |
| 74-76 | 5216 | 10-30-1916 | " " | " | 1,018.50 | 420.95 | Quartermaster's voucher 3994 for June, 1917, suspended. |
| 77 | 6008 | 11-14-1916 | " " | So. Beth., Pa | 3,482.06 | 2,655.85 | Wood's voucher 13277, March, 1918, suspended. |
| 78 | 9997 | 2-12-1917 | " " | Doylestown, Pa | 511.54 | 511.54 | Certificate 54760. |
| 79-80 | 10305 | 2-20-1917 | " " | Mah. City, Pa | 831.00 | 831.00 | Certificate 52361. |
| 81 | 10308 | 2-20-1917 | " " | Tamaqua, Pa | 435.30 | 435.30 | Wood's voucher 12097-T, May, 1918, suspended. |
| 82 | 10306 | 2-20-1917 | " " | Pottsville, Pa | 415.50 | 415.50 | Certificate 52361. |
| 83 | 10247 | 2-19-1917 | " " | " | 448.50 | 448.50 | Certificate 52361. |
| 84 | 9991 | 2-12-1917 | " " | Allentown, Pa | 558.82 | 380.76 | Certificate 57470. |
| 85-86 | 8501 | 1-9-1917 | " " | Reading, Pa | 893.40 | 893.40 | Certificate 52359. |
| 87-88 | 8502 | 1-9-1917 | " " | Hamburg, Pa | 893.40 | 893.40 | Certificate 52359. |
| 89-90 | 8505 | 1-9-1917 | " " | Allentown, Pa | 893.40 | 893.40 | Certificate 52359. |
| 92-100 | 8510 | 1-9-1917 | " " | Allentown, Pa | 3,085.80 | 3,085.80 | Wood's voucher 1898, May, 1918, suspended. |
| 101 | 8504 | 1-9-1917 | " " | Lebanon, Pa | 446.70 | 446.70 | Certificate 52253. |
| 102 | 8503 | 1-9-1917 | " " | Pine Grove, Pa | 446.70 | 446.70 | Certificate 52253. |
| 103 | 8511 | 1-9-1917 | " " | Harrisburg, Pa | 446.70 | 446.70 | Certificate 52253. |
| 104 | 8512 | 1-9-1917 | " " | Harrisburg, Pa | 313.20 | 313.20 | Certificate 55099. |
| | | | | | 41,378.28 | 31,878.87 | |

14 II. *General traverse, Feb. 2, 1921*

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises having been entered on the part of the defendant, a general traverse is entered as provided by rule 34.

III. *History of proceedings*

On December 12, 1922, this case was argued and submitted on merits by defendant, and submitted without argument by plaintiff.

On December 18, 1922, the court filed an order remanding the case to the calendar with leave to both parties to take further testimony.

On February 7, 1923, the case was argued and submitted on order of remand.

On March 12, 1923, the court filed findings of fact and conclusion of law and entered judgment in favor of the plaintiff in the sum of $14,236.04.

On April 30, 1923, the plaintiff filed a motion for a new trial and for amendment of findings of fact.

On May 11, 1923, the defendant filed a motion for a new trial.

On May 14, 1923, the court filed an order allowing the motion of the parties for a new trial and vacated and set aside former judgment.

On June 11, 1923, the case was argued and submitted on new trial.

On November 5, 1923, the court filed an order withdrawing former findings and judgment and filing new findings and entering judgment against plaintiff in the sum of $87.09 for the cost of printing the record.

On January 21, 1924, by leave of court, the plaintiff filed a motion for amendment of findings.

On February 11, 1924, by leave of court, the plaintiff was allowed to withdraw motion for amendment of findings filed January 21, 1924. An order was also filed allowing both parties to take testimony and ordered that motions for new trial and briefs be filed on or before April 8, 1924.

15 On March 3, 1924, on motion made therefor, the Reading Company was substituted as plaintiff in this case.

On April 14, 1924, the plaintiff filed a motion for a new trial and for amendment of findings.

On April 24, 1924, the defendant filed objections to said motion.

On April 29, 1924, the plaintiff's motion for new trial and amendment of findings of fact was argued and submitted.

On June 2, 1924, the court filed an order referring this and other similar cases to George M. Anderson, commissioner, to ascertain and report the facts, and leave was granted to both sides to file exceptions to said report.

On July 31, 1924, the said special commissioner filed his report and findings of fact.

On September 13, 1924, the plaintiff filed exceptions to the report of said commissioner.

On October 18, 1924, by leave of court, the defendant filed exceptions to the report of said commissioner.

IV. *Argument and submission*

On October 29, 1924, this case was argued and submitted on report of special commissioner by Mr. F. Carter Pope, for plaintiff, and Messrs. A. A. McLaughlin and L. A. Smith, for defendant.

V. *Order of court*

Entered January 5, 1925

This cause was submitted to the court upon the report of the commissioner heretofore appointed to make findings of fact and report thereon, upon the evidence adduced in the case and upon the exceptions of the plaintiff and of the defendant to parts of the
16 commissioner's report. On consideration whereof it is adjudged and ordered this 5th day of January, 1925, that the said exceptions of the plaintiff and of the defendant to the said commissioner's report be and the same are overruled, and the report is confirmed.

It is further ordered that the findings of fact and conclusion thereon and opinion hertofore filed in this cause be and the same are vacated and withdrawn. Findings of fact and conclusion of law are this day filed, with an opinion by Chief Justice Campbell. Judgment is granted in favor of the plaintiff in the sum of $14,236.04.

17 VI. *Findings of fact, conclusion of law, and opinion of the court by Campbell, Ch. J.*

Entered January 5, 1925

This case having been heard by the Court of Claims upon the report of the special commissioner and the evidence, the court makes the following

*Findings of fact*

I

This suit was brought by the Philadelphia & Reading Railway Co., which has since been reorganized and its name changed to the Reading Company. Wherever the word "plaintiff" is used in these findings of fact it will be understood to refer to the Philadelphia & Reading Railway Co.

The plaintiff was and its successor is a corporation duly incorporated under the laws of the State of Pennsylvania. At the times of the different transactions hereinafter set forth in these findings of fact it operated, and its successor still operates, a system of railways in the State of Pennsylvania and other States, doing business as a carrier of passengers and freight for hire and reward under tariffs duly filed with the Interstate Commerce Commission by it and by its connecting lines, with its concurrence, and published as provided by law.

II

When the troops and Army impedimenta hereinafter described were transported there were in force on all the lines which furnished such transportation special baggage tariffs which covered the territories through which said troops and impedimenta were moved. Said special baggage tariffs provided, in substance and effect, the terms and conditions under which associated travelers traveling on one ticket might become entitled to a baggage car free for the transportation of certain of their effects at the rate of one car free to each (generally) 25 passengers paying full fares.

III

With respect to the articles pertaining to and accompanying bodies of troops, and composed of tents, ambulances, wagons, caissons, ammunition, tools, and other articles peculiar to military
18 impedimenta, and sometimes called company or battalion or regimental "property" or "camp equipment," it has always been claimed by carriers and conceded by the Quartermaster General of the United States Army that such shipments were essentially freight and were so to be treated in settlements with carriers for their transportation.

For many years the Quartermaster General has issued periodically a publication entitled "Manual for Quartermaster Corps," and the edition thereof published and made effective in December, 1916, and still in full force and effect, contains paragraphs 3391, 3441, 3443, 3445, 3453, 3494, 3498, and 3500, which, amongst others, recognize the clear distinction between public property and equipage or Army baggage on the one hand and the baggage entitled to free transportation, or transportation in the baggage service, on the other hand. A decision of the comptroller of June 18, 1918 (24 Comp. Dec. 774), to effect that, under the provisions of carriers' baggage tariffs the Government was entitled to one car free for every 25 passengers in the accompanying passenger movement was the first notification that the Government claimed one special baggage car or its equivalent for every 25 soldiers traveling with Army impedimenta. Prior to that decision the Government paid for such impedimenta as freight.

IV

Since the decision of the comptroller of June 18, 1918, accounting officers of the Government have made settlements upon the basis that the United States was entitled to one baggage car free for the transportation of its camp equipment and company property for every 25 officers and enlisted men traveling.

V

Prior to January 1, 1917, the plaintiff and all the other lines, parties to the interterritorial military arrangements which became effective on that date, were parties to agreements, known as military agreements, between authorized representatives of the carriers and authorized officers of the War and Navy Departments, which were for the most part similar to and superseded by the later arrangements.

The said interterritorial military arrangement or contract was entered into between the United States Army, Navy, and Marine Corps, and the carriers in the territories of the Central Passenger Association, New England Passenger Association, Southeastern Passenger Association, Southwestern Passenger Association, Transcontinental Passenger Association, Trunk Line Association, and Western Passenger Association, to become effective January 1, 1917, and to supersede and cancel all previous interterritorial arrangements between the same parties, the material and relevant parts of which are as follows:

"iii

"TRAFFIC COVERED BY THIS ARRANGEMENT.—The net fares, allowances, and routes in connection therewith authorized hereunder are applicable exclusively for the transportation of officers, en-
19 listed men, and others connected with the United States Army, United States Navy, and United States Marine Corps, for whom the United States Government is lawfully entitled thereto, and when traveling on transportation requests of the issues of the United States Army, United States Navy, and United States Marine Corps and at the United States Government expense only.

"iv

"NET FARES AND ALLOWANCES.—(1) (a) The fares applicable under this arrangement will be the lawful commercial fares as on file with the Interstate Commerce Commission from starting point to destination at time of movement (see exceptions, Sec. V), less lawful land-grant deductions properly established, less 5 per cent (5%), the 5 per cent allowance not to exceed the maximum allowances or exceptions as specified in Section VI. Government fares so established will apply to all military traffic, as described in Section III, includ-

ing special train and special car movements, as well as individual and party movements. (See Sec. XI.)

"(b) Proportions will not be used in any case in the construction of fares.

* * * * * * *

"xi

"When special cars or special trains are furnished hereunder, not less than the minimum number of fares for such special cars or special trains will be required.

"xv

"BAGGAGE.—(1) One hundred and fifty (150) pounds of personal effects, properly checkable as baggage, under the tariff of the initial carrier, will be transported without charge for each person. Personal baggage in excess of the free allowance stated when provision for the transportation of the excess baggage is specially made in United States Army, Navy, or Marine Corps transportation requests and is paid for by the United States Government will be charged for at the regular excess-baggage rate, based upon the net individual fare. When provision is not made in the transportation request for transportation of excess baggage, collection will be made for the traveler at the regular commercial rate for weight in excess of the free allowance stated. Excess-baggage charges will not be subject to allowances applicable in connection with the fares for tickets under this arrangement. Baggage regulations in other respects than above will be in accordance with the tariff of the initial carrier checking the baggage in each case.

"(2) Company, battalion, regimental, or Government property is not included in the above.

"xx

"TERMINATION OF ARRANGEMENT.—It is understood that this arrangement may be terminated at the pleasure of the United States Army, United States Navy, and United States Marine Corps, independently of each other, and the withdrawal from the arrangement of one of these branches of the Government will in no way affect the operation of the arrangement as to the other branches of the Government electing to continue it, the reservation being made, however, that the carriers may withdraw from the arrangement at their option."

## VI

The interterritorial military arrangement effective July 1, 1916, which was superseded by the similar agreement effective January 1, 1917, referred to in Finding V, was indorsed by the comptroller

in a letter to the Secretary of War, dated May 20, 1916, which among other things, contained the following:

"9. This agreement is considered advantageous to the Government for the following reasons: (a) It will result in a saving of Government funds. (b) It will procure cooperation on the part of the railroads. (c) It will facilitate the settlement of accounts."

On March 3, 1917, the Quartermaster General, with the approval of the Secretary of War, ordered copies of said interterritorial military arrangements to be forwarded to different officers throughout the country concerned with the movement of troops, with the statement that "the new arrangements are along the same lines as the old ones; some disputed points have been cleared up and are therefore published in the new arrangement."

On September 15, 1917, all department, depot, and camp quartermasters were notified by the Quartermaster General that:

"1. It is desired that all shipping quartermasters be instructed that camp equipment and impedimenta will not be carried as checkable baggage, and that checkable baggage includes only wearing apparel and related articles ordinarily carried in a trunk by a commercial traveler."

Copies of said interterritorial military arrangement were distributed to all quartermasters between February 28, 1917, and March 3, 1917.

## VII

The said interterritorial military arrangement was in full force and effect as late as May 20, 1920, and its provisions have been observed by the carriers generally. Under the terms of said arrangement the Government has paid for transportation at rates substantially 5 per centum less than it otherwise would have paid.

## VIII

At various times during the year 1917 plaintiff and other carriers transported a number of movements of United States troops to terminal points on plaintiff's lines. The troops were transported on regular transportation requests at rates substantially 5 per cent less than the regular tariff rates, and the Army impedimenta was moved as freight on bills of lading issued by the Government.

## IX

The plaintiff, at the time the military impedimenta in question here was moved, had on file with the Interstate Commerce Commission a tariff entitled "Southwestern Lines Classification
21 Exceptions and Rules—Circular No. 1–G, F. A. Leland's I. C. C. 1137," item 146–D, which reads as follows:

| | Class | |
|---|---|---|
| | Less carloads | Carloads |
| Ordnance and quartermaster's stores (Section A): Government freight— State and Federal munitions of war, including Indian supplies moving under Government bills of lading, will be transported in regular freight-train service on the following basis— | | |
| Ammunition and live stock | Regular classification and tariff, subject to land-grant deductions. * * * | |
| Army field ranges and cooking outfits, not boxed or crated * * * | 1. (Net cash) | |
| Camp equipage; minimum weight 30,000 pounds | | A. (Net cash.) |
| All other articles, comprising ordnance and other munitions of war—not including camp equipage or baggage—carload, minimum weight 30,000 pounds. * * * | Regular classification and tariff, subject to land-grant deductions. * * * | A. (Net cash.) |

The said tariff also provided classifications for the different articles composing said shipments, and in addition thereto the following:

"Class D

"Emigrants' movables, not for sale or speculation, prepaid (see note).

"NOTE.—The term 'emigrants' movables' will apply to the property of an intending settler only and will include tools and implements of calling, including hand and foot power machines, but not including machinery driven by steam, electricity, gas, gasoline, compressed air, or water, other than agricultural implements; second-hand store fixtures of merchants; second-hand vehicles, not including self-propelled vehicles, hearse, and similar vehicles, livestock, trees and shrubbery, lumber and shingles, fence posts; one portable house K. D., seeds for planting purposes, food for livestock while in transit, and household goods not to exceed two pianos, but does not include general merchandise, acids, drugs, explosives, matches, paints, or inflammable oils nor any articles, whether herein enumerated or not, which are intended for sale or speculation.

* * * * * * *

"Household goods and emigrants' movables, including old or used furniture, prepaid:

"When the value of the shipments exceeds ten (10) dollars per hundred (100) pounds and the consignor so states (subject to notes 1 and 3) (C. L. min. wt. 12,000 lbs.) (subject to rule 27, L. C. L., class 1½; C. L., class 1).

"When the value of the shipment does not exceed ten (10) dollars per one hundred (100) pounds and the consignor so states (subject to notes 2 and 3) (C. L. min. wt. 12,000 lbs.) (subject to rule 27)."

Notes 1 and 2 referred to set out the contract the shipper was to execute according to the value of the shipment; rule 27 prescribed the terms upon which cars of special size would be furnished; and note 3 specified the contents of shipments of household goods and emigrant movables substantially the same as western classification.

22 X

The plaintiff, as the last carrier, rendered its bills for the transportation of freight as described in Finding VIII to the disbursing quartermaster of the United States Army. Pending the settlement of said bills the plaintiff's railroad was taken over by the Government on January 1, 1918, under the act of August 29, 1916 (39 Stat. 619, 645), and the President's proclamation of December 26, 1917, and accordingly came under the control, management, and operation of the United States Railroad Administration, by which agency its operation and control were continued until March 1, 1920 (41 Stat. 457). To whom the amounts referred to in this finding were paid by the disbursing officer is set out hereafter in Finding XI.

Bill 1–73, B. L. WQ. 9651, was originally stated by plaintiff in the sum of $23,536.70, and was corrected and restated by plaintiff in the sum of $18,835.92. The sum of $85.60, feeding charges, was stricken out, by whom not shown, and the bill was paid by the disbursing officer in the sum of $18,750.32. The clasification of the military impedimenta in the original bill and the restated bill was the same and no part of the difference between the amounts stated in the original and restated bill was due to change from class A, net cash, to class D.

Bill 6629–30–31 (erroneously stated by plaintiff as bill 74–76), B. L. WQ–5216, was originally stated by plaintiff in the sum of $1,018.50 on the basis of class A, net cash, rating for military impedimenta and was restated by plaintiff in the sum of $657.65 on the basis of class D with land-grant deduction, in which amount it was paid by the disbursing officer.

Bill 77 (alias 6658–68), B. L. WQ–6008, was originally stated by plaintiff in the sum of $3,482.06 and was restated in the sum of $2,609.67, by whom not shown; it was afterwards corrected by plaintiff to the sum of $2,134.66, which was paid by the disbursing officer. No part of the difference in amount between the original and corrected bill was due to a change from class A, net cash, to class D, with land-grant deduction on military impedimenta.

Bill 78, B. L. WQ–9997, was originally stated by plaintiff in the sum of $179.40 on the basis of class D on military impedimenta with land-grant deduction, and was paid in that amount by the disbursing officer.

Bill 79–80–82–83 (alias bill 79–80), Bs. L. WQ–10247, WQ–10305, WQ–10306, was originally stated by plaintiff in the sum of $1,695.60 on the basis of class A, net cash, on military impedimenta, and was restated by plaintiff in the sum of $633.01 on the basis of class D, with land-grant deduction, in which amount it was paid by the disbursing officer.

Bill 81, B. L. WQ–10308, was originally stated by plaintiff in the sum of $423.90 on the basis of class A, net cash, on military impedimenta, and was corrected to the sum of $189.71, by whom not shown; it was afterwards corrected by plaintiff to the sum of $194.93 on the

basis of class D, with land-grant deduction, in which amount it was paid by the disbursing officer.

Bill 84, B. L. WQ–9991, was originally stated by the plaintiff in the sum of $499.53 on the basis of class A, net cash, on mili-
23 tary impedimenta, and was restated by plaintiff in the sum of $255.57 on the basis of class D, with land-grant deduction, in which amount it was paid by the disbursing officer.

Bills 86–88–85–87–88–90 (alias bills 85, 86, 88 and 88–90), Bs. L. WQ–8502 and WQ–8505, was originally stated by plaintiff in the sum of $1,482.42 on the basis of class D on military impedimenta, with land-grant deduction, in which amount it was paid by the disbursing officer.

Bill 92–100, B. L. WQ–8510, was originally stated by the plaintiff in the sum of $1,516.90, in which amount it was paid by the disbursing officer; no claim for freight charges for transportation of military impedimenta are made by plaintiff. There is no satisfactory evidence produced to show that this bill was ever presented in any larger amount.

Bill 100–103, inclusive (alias bills 101, 102, 103), Bs. L. WQ–8504, WQ–8503, and WQ–8511, was originally stated by plaintiff in the sum of $1,271.70 on the basis of class A, net cash, on military impedimenta, and was restated by plaintiff in the sum of $741.21 on the basis of class D, with land-grant deduction, in which amount it was paid by the disbursing officer.

Bill 104, 100–103, inclusive (alias bill 104), B. L. WQ–8512, was originally stated by plaintiff in the sum of $423.90 on the basis of class A, net cash, on military impedimenta, and was restated by plaintiff in the sum of $268.78 on the basis of class A, with land-grant deduction, in which amount it was paid by the disbursing officer. No articles comprising military impedimenta were involved.

The difference between the amounts stated by plaintiff in its original bills at class A, net cash, rates on military impedimenta, $4,909.23, and afterwards restated by plaintiff without protest, at class D rates, with land-grant deductions, $2,482.37, amounts to $2,426.86.

## XI

Restated bill 6629–30–31 (alias bill 74–76), B. L. 5216, for $657.65 was paid by the disbursing officer directly to the plaintiff on June 20, 1917; all the other restated bills referred to in Finding X, amounting to $26,157.20, were paid as restated by the disbursing officer to the Director General of Railroads beginning February 4, 1918, and ending June 14, 1918, pursuant to General Order No. 17, and were credited on the Railroad Administration books to the account "Individuals and companies," and were not credited to the plaintiff. For alleged overpayments made by the said disbursing officer on some of said bills the Auditor for the War Department, in auditing the said disbursing officer's accounts, disallowed the same, and on February 28, 1920, deducted $794.92 for land-grant and

$462.27 for car rent from Railroad Administration bills, a total of $1,257.19 (about which no question arises herein), which the Railroad Administration deducted from the $26,157.20 paid to it on corporate bills and retained, leaving a balance in the hands of the Railroad Administration for transportation prior to Federal control of $24,900.01.

The auditor in auditing the disbursing officer's accounts of the said corporate bills on February 11, 1920, disallowed $10,853.71 as
24 an overpayment by the disbursing officer as aforesaid to the Railroad Administration on the ground that the Government was entitled to have had its military impedimenta moved free in that amount under a ruling of the comptroller and thereupon the auditor deducted that amount from a pending account of the Railroad Administration for services by the latter. The Railroad Administration repaid itself by deducting this amount, $10,853.71, from the said balance on hand, $24,900.01, leaving a balance of $14,046.30.

General Order No. 17 is attached to these findings as Appendix A and is made part of this finding by reference thereto.

## XII

On February 24, 1920, General Order No. 66, effective February 29, 1920, was issued by the United States Railroad Administration for the purpose of outlining the method to be followed in the separation of the accounts of the Railroad Administration and the different railroads under its control when the railroads should be returned to their owners, which provided, among other things, that—

"SEC. 5 (a). * * * If during the period of Federal operations amounts representing overcharge freight claims paid out of Federal funds, affecting traffic, the revenues from which were included in corporation revenue or credited to it as lay-over revenue on the Federal books, or amounts representing loss and damage claims paid out of Federal funds, chargeable to the period prior to Federal control, were carried on the Federal books in suspense accounts pending adjustment thereof with other carrier corporations, or pending receipt of additional information wherewith to dispose of the amounts carried, and such amounts are carried in suspense account as of February 29, 1920, they shall be charged to the corporation. Such amounts shall on the Federal books be charged to the account '(Name of corporation)—Corporate transactions,' and on the corporate books should be charged to an appropriate suspense account and credited to the account 'U. S. Government—Corporate transactions.'"

Copy of General Order No. 66 is attached to these findings as Appendix B and is made part hereof by reference.

## XIII

At different times from April 21, 1920, to July 15, 1920, inclusive, the auditor deducted from other Railroad Administration bills

$3,382.33, upon the ground that the disbursing officer had overpaid corporate bills in that amount when the military impedimenta should have been transported free by plaintiff under tariffs in force, at the rate of one baggage car free for every 25 men in the troop movement. The Railroad Administration paid itself for the amount so deducted out of the balance of the funds in its hands paid on plaintiff's bills, $14,046.30 (see Finding XI), leaving a balance of such funds still in the hands of the Railroad Administration of $10,663.97. This balance of $10,663.97 was credited by the Director General of Railroads to plaintiff in August, 1920, on Railroad Administration journal entry 489 through General Order No. 17 account, entitled "P. & R. Ry. Co., assets, Dec. 31, 1917, collected."

When the transportation service was rendered the plaintiff charged on its books against the War Department the said amount of its bills $26,157.20, which includes the said sum of $1,257.19 mentioned in Finding XI and about which there is no controversy. If said sum of $10,663.97 be credited on the said bills, the amount deducted by the auditor, $14,236.04, remains as a charge.

## XIV

On August 25, 1920, a complete settlement was made between the War Department and the Director General of Railroads of all unsettled accounts for transportation furnished by the Railroad Administration to the War Department between January 1, 1918, and March 1, 1920, the period of Federal control of railroads, and the amount paid by the War Department to the Railroad Administration in such settlement was $38,169,294.39.

On August 26, 1920, the comptroller of the Railroad Administration issued, with the approval of the Director General of Railroads, Accounting Circular 152, which reads:

"*To each carrier the properties of which were under Federal control at the termination thereof at midnight, February 29, 1920:*

"A settlement has been made between the War Department and the director general for all unpaid charges for passenger and freight transportation service, including Pullman fares and demurrage charges, rendered by the director general.

"Accounting officers are directed to close into an account, styled 'War Department transportation charges,' all unpaid accounts against the War Department carried in the Federal books covering such transportation service and to discontinue rendering Federal bills against the War Department for services of this nature.

"The account, 'War Department transportation charges,' shall be closed into the administration ledger control account and reported as a special item on Form AC 512–A in the same manner as prescribed in Accounting Circular 82 for reporting other items transferred to the administration ledger control account. Record of the balance so transferred shall be kept in the Federal accounts in such

detail that it may be readily audited by representatives of the Railroad Administration.

"Special attention is directed to the fact that the settlement above referred to involves the War Department only; that it does not include amounts due for the construction of tracks, service at cantonments, etc.; and does not include bills rendered in the Federal accounts for transportation service performed prior to Federal control.

"Unpaid bills carried in the Federal accounts against the War Department, for transportation service performed prior to Federal control, shall not be closed into the account, 'War Department transportation charges,' but instead shall be charged to the corporation through the account ('Name of corporation)—Corporate transactions.' Such charges against the corporation, when reported on settlement statement Form AC 510, shall be allocated to the quarter in which the corporation was originally credited with the amount, or bill was stated in the accounts."

## XV

The final account of the final settlement between the Director General of Railroads and the plaintiff reads as follows:

"United States Railroad Administration, Director General of Railroads.—Comparison of claim submitted by the Philadelphia & Reading Railway Co., including the Atlantic City Railroad Co., Catasauqua & Fogelsville Railroad Co., the Chester & Delaware River Railroad Co., Middletown & Hummelstown Railroad Co., the Gettysburg & Harrisburg Railway Co., the North East Pennsylvania Railroad Co., Perkiomen Railroad Co., the Philadelphia & Chester Valley R. R. Co., the Philadelphia, Newton & New York R. R. Co., Pickering Valley Railroad Co., the Port Reading Railroad Co., Reading & Columbia Railroad Co., the Rupert & Bloomsburg R. R. Co., Stony Creek Railroad Co., the Tamaqua, Hazelton & Northern R. R. Co., the Williams Valley Railroad Co., the Philadelphia Grain Elevator Co., the Delaware River Ferry Co. of New Jersey, with books of the central administration adjusted to March 31, 1922."

| | Corporation claim as of Mar. 31, 1922 | Administration books as of Mar. 31, 1922 | Difference |
|---|---|---|---|
| DUE TO CORPORATION | | | |
| Compensation | $36,861,152.00 | $36,814,668.84 | $46,483.16 |
| Less advances, loans, etc | 23,515,000.00 | 23,515,000.00 | |
| Rental interest on completed | 13,346,152.00 | 13,299,668.84 | 46,483.16 |
| | 421,260.54 | 421,260.54 | |
| | 13,767,412.54 | 13,720,928.38 | 46,483.16 |
| OPEN ACCOUNTS DUE TO CORPORATION | | | |
| Cash on hand, Dec. 31, 1917 | 3,751,989.43 | 3,751,989.43 | |
| Agent's and conductor's balance, Dec. 31, 1917 | 5,741,370.49 | 5,741,370.49 | |
| Assets, Dec. 31, 1917, collected | 4,559,283.87 | 4,909,283.87 | |
| Total | 14,452,643.79 | 14,452,643.79 | |

| | Corporation claim as of Mar. 31, 1922 | Administration books as of Mar. 31, 1922 | Difference |
|---|---|---|---|
| **OPEN ACCOUNTS DUE FROM CORPORATION** | | | |
| Liabilities, Dec. 31, 1917, paid | $13,543,371.73 | $13,543,371.73 | |
| Corporate transactions | 3,195,291.81 | 3,195,291.81 | |
| Expense prior to Jan. 1, 1918 | 2,301,240.96 | 2,301,240.96 | |
| Revenue prior to Jan. 1, 1918 | 523,946.05 | 523,946.05 | |
| Total | 19,563,850.55 | 19,563,850.55 | |
| Balance due from corporation on open accounts | 5,111,206.76 | 5,111,206.76 | |
| Balance due to corporation | 8,656,205.78 | 8,609,722.62 | $46,483.16 |
| **OTHER ITEMS DUE TO CORPORATION** | | | |
| Material and supplies | 4,468,333.00 | 1,188,287.23 | 3,280,045.77 |
| Equipment retired—Normal | 1,983,888.05 | 1,925,887.31 | 58,000.74 |
| Road property retired and not replaced—Normal | 233,331.36 | 63,653.95 | 169,677.41 |
| Road property retired and not replaced—Fire | 13,846.00 | 11,108.12 | 2,737.88 |
| Road property retired and replaced | 654,723.04 | | 654,723.04 |
| Preliminary surveys—Projects abandoned | 10,405.54 | 10,405.54 | |
| Total | 7,364,526.99 | 3,199,342.15 | 4,165,184.84 |
| 27 **OTHER ITEMS DUE FROM CORPORATION** | | | |
| Additions and betterments | $13,768,317.83 | $13,768,317.83 | |
| Salvage from A. & B. for war purposes | 4,932.43 | 4,932.43 | |
| Office furniture | 16,985.24 | 16,985.24 | |
| Interest other than rental | 446,002.06 | 336,655.93 | $109,346.13 |
| Allocated equipment account | 12,747,077.42 | 12,747,077.42 | |
| Adjustments subsequent to March, 1922 | 4,141.22 | 4,141.22 | |
| Interest on subsequent adjustments | 465.84 | 465.84 | |
| Adjustments unapproved by corporation | | 5,905.46 | 5,905.46 |
| Interest on unapproved adjustments | | 664.29 | 664.29 |
| Total | 26,987,922.04 | 26,885,145.66 | 102,776.38 |
| Balance due from corporation on other items | 19,623,395.05 | 23,685,803.51 | 4,062,408.46 |
| Balance due from corporation | 10,967,189.27 | 15,076,080.89 | 4,108,891.62 |
| **DEPRECIATION OBLIGATION** | | | |
| Equipment | 3,866,526.91 | 3,777,229.00 | 89,297.91 |
| Balance due from corporation | 7,100,662.36 | 11,298,851.89 | 4,198,189.53 |
| **MAINTENANCE** | | | |
| Way and structures—Under | 2,609,552.71 | 2,321,411.00 | 288,141.71 |
| Equipment—Under | 611,689.21 | 977,420.89 | 365,751.68 |
| Balance due to corporation on maintenance | 3,221,241.92 | 3,298,851.89 | 77,609.97 |
| Net balance due from corporation | 3,879,420.44 | 8,000,000.00 | 4,120,579.56 |

I hereby certify that this is a correct copy.

(Signed) L. J. TRACY,
*Comptroller, U. S. R. R. A.*

The balance of $10,663.97 credited to plaintiff in August, 1920, was paid to plaintiff in the final settlement account above in the account "Assets December 31, 1917, collected". The deduction for free baggage, $14,236.04, did not enter into the said account.

## XVI

When final settlement was effected, an agreement was entered into on June 30, 1922, between James C. Davis, Director General of Railroads and agent of the President, acting on behalf of the United States and the President, and the Philadelphia & Reading

system of railroads, through its President, the material parts of which read as follows:

"The said director general hereby acknowledges payment of the sum of eight million dollars ($8,000,000) by the said companies, the receipt whereof is hereby acknowledged, in full satisfaction and discharge of all claims, right, and demands of every kind and character which the said director general or anyone representing or claiming to represent the director general, the United States, or the President now has or hereafter may have or claim against the said companies or any of them growing out of or connected with the possession, use, and operation of the companies' property by the United States during the period of Federal control, or out of the contract between the parties dated the 18th day of February, 1920, and the said companies both jointly and severally hereby acknowledge the return to and receipt by them of all their property and rights
28 which they are entitled to, and further acknowledge that the director general has fully and completely complied with and satisfied all obligations on his part, or on the part of the United States or the United States Railroad Administration, growing out of Federal control.

"The purpose and effect of this instrument is to evidence a complete and final settlement of all demands of every kind and character as between the parties hereto growing out of the Federal control of railroads * * *."

The said agreement is attached to these findings as Appendix C and is made a part hereof by reference thereto.

## XVII

In pursuance of the authority contained in section 1 of the act of March 21, 1918 (40 Stat. 451–453), known as the Federal railroad control act, the Director General of Railroads on February 18, 1920, entered into an agreement with the Philadelphia & Reading Railway Co. and its 18 affiliated companies, the material parts of which read:

"SECTION 2.—PROPERTY TAKEN OVER

"SEC. 2. The railroads and systems of transportation of the company and of its said affiliated companies of which the President has taken over possession, use, control, and operation shall be considered as including:

"(a) The following roads and properties:

* * * * * * *

"(b) All materials and supplies on hand at midnight December 31, 1917.

"(c) All balances in the account or accounts representing the total of 'net balance receivable from agents and conductors' and 'net balance due from agents, pursers, and stewards' as of midnight December 31, 1917.

"SECTION 4.—OPERATION AND ACCOUNTING DURING FEDERAL CONTROL

"SEC. 4. (a) All amounts received by the director general under paragraph (c) of section 2 hereof and all other amounts whether received from the companies in cash or collected or realized upon by him from current operating assets belonging to the companies or arising from railway or water-line operations prior to midnight of December 31, 1917, shall be credited by him to the companies; and the director general shall, to the extent of the cash so received or realized, pay and charge to the companies all expenses arising out of railway or water-line operations prior to January 1, 1918, including reparation claims, and, unless objected to by the company, may pay and charge to the companies any of such expenses, including reparation claims, in excess of the cash so received or realized. Balances of the above accounts shall be struck quarterly on the last days of March, June, September, and December of each year, and the cash balance found on such adjustments to be due either party shall be then payable, and, if not paid, shall bear interest at the rate of 6 per cent per annum, unless the parties shall agree upon a different
29 rate; except that the rate of interest on any portion of a balance found due to the companies which is derived from cash in bank to the credit of the companies on interest, shall be adjusted in each case independently of this contract as the parties may agree.

"(b) Railway and water-line operating expenses, reparation and other claims, hire of equipment and joint facility rents shall be allocated with reference to the time when incurred as between the period prior and subsequent to midnight of December 31, 1917, and as between the period of Federal control and the period subsequent thereto. Railway and water-line operating revenues shall be allocated as between the period prior and subsequent to midnight of December 31, 1917, in accordance with the established accrual practices of the companies; except that where prior to midnight of December 31, 1917, the companies' part of a service on through business had been completed or carload lots on their own lines had reached destination, the revenue of the companies for such service shall be allocated to them; but as to classes of traffic where in the opinion of the director general such allocation will involve undue delay or undue absorption of accounting labor, such revenues shall be allocated in accordance with the established accrual practices of the companies. Like methods of accruing and allocating such revenues shall be used at the end of Federal control.

"(c) * * *

"(d) Cash receipts or disbursements and other items arising out of transactions which do not enter into or form a part of those used in determining the companies' standard return shall not be received or paid by the director general unless such transactions are negotiated or conducted by his order for account of the companies and with the consent of the company. When moneys are so received or

paid by the director general in connection with such corporate transactions they shall be credited or charged to the companies. There shall be an accounting of the amounts due by or to any of the parties under this paragraph at the end of each quarter year of Federal control, and the amount so found due shall be then payable and if not paid shall bear interest as provided in paragraph (a) of this section.

"SECTION 9.—FINAL ACCOUNTING

"Sec. 9. (a) * * *

"(b) At the end of Federal control the director general shall return to the companies all uncollected accounts received by him from them and also materials and supplies equal in quantity, quality, and relative usefulness to that of the materials and supplies which he received, and to the extent that the director general does not return such materials and supplies he shall account for the same at prices prevailing at the end of Federal control. To the extent that the companies receive materials and supplies in excess of those delivered by them to the director general they shall account for the same at the prices prevailing at the end of Federal control and the balance shall be adjusted in cash."

* * * * * * *

30 Copy of the agreement between the Director General of Railroads and the Philadelphia & Reading Railway Co. and affiliated companies, dated February 18, 1924, is made part of this finding by reference thereto.

*Conclusion of law*

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover the sum of $14,236.04 mentioned in Finding XIII.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of fourteen thousand, two hundred thirty-six dollars and four cents ($14,236.04).

The other items in the petition are dismissed.

*Opinion*

CAMPBELL, Chief Justice, delivered the opinion of the court:

This case has been before the court several times. At one time it was decided against the plaintiff, who made a motion for a new trial Pending that motion a considerable number of other cases were submitted, while still others were awaiting hearings, all of which involved the general question of the effect to be given settlements between the Director General of Railroads and the railroad companies. That being one of the questions in this case, the court referred this and other submitted cases of similar kind to a special commisisoner

for a full examination and report, authorizing him to take and hear additional evidence that might be adduced and to make a report of his findings and the evidence. This the special commissioner has done. In the order of reference it was provided that upon the coming in of the commissioner's report the parties in each of the cases, within a stated time, could file exceptions to any of his findings or conclusions. In the instant case exceptions were filed. The case has been heard upon the report, exceptions thereto, and the record. Those exceptions by both parties are overruled and the report of the special commissioner is confirmed. As required by the rules, the court has made findings of fact based upon this report and the evidence. The facts now found are materially different from those developed in former hearings and so far as the question of the director general's settlement is concerned present a substantially different case from that made in the earlier hearings. It becomes necessary to review them.

The petition was filed December 3, 1920, by the Philadelphia & Reading Railway Co., which rendered the transportation services out of which the matters here involved arose. The Reading Company, as the successor of this plaintiff company, has been substituted as party plaintiff. This substitution arose after the services were rendered and after all the questions involved in the case had arisen, but for brevity the term plaintiff will be used as inclusive of the original party, the Philadelphia & Reading Railway Co.

For transportation services rendered for the Government by the plaintiff companies bills were rendered in due course by the carrier to the proper disbursing officers. These bills were rendered long prior to the date of the passage of the railroad into Federal
31 control in December, 1917, but payments of them had not been made at that time. It was while the plaintiff company's properties were being operated by the Director General of Railroads that checks of the disbursing officer to the amount of $26,157.20 were drawn by this officer payable to the Philadelphia & Reading Railway Co., and intended to be in payment for the transportation services mentioned. The director general had utilized the services of the administrative and accounting officers of the railroad companies in large degree by retaining them in his service. Whether because of this condition or because the collection of such outstanding bills as these came within the contemplation of the law or the understanding of the parties, the proceeds from the checks went into the director general's accounts. The proceeds arising from the operation of the roads during Federal control became the property of the United States. (Act of March 21, 1918, section 12, 40 Stat. 407; Dupont Co. v. Davis, 264 U. S. 456.) Debts due the carriers at the time Federal control began occupied a different position. No question has been or can be raised as to his right to receive the payment at the time it was made. At that time, however, the agreement between the director general and the railroad companies that was authorized by the act of March 21, 1918 (40 Stat. 451) had not

been executed. For this reason probably the method of making entries on the books under specific accounts was held in abeyance. While the collection of the items appeared in proper form there was at that time no specific credit given on an account with the plaintiff.

After Federal control began the director general presented bills to the accounting or disbursing officers for transportation services rendered the Government by him upon plaintiff's lines. In the meantime, and before the director general's bills had been audited for payment, it was determined by the Auditor for the War Department in his audit of the disbursing officer's accounts that this officer had overpaid plaintiff's bills in the checks issued as stated and collected by the director general. The claim of the auditor was based upon a decision of the Comptroller of the Treasury that in the movement of troops of the Government the carriers were required to furnish free transportation of impedimenta on the basis of one car for each 25 men. The amount of this supposed overpayment was $14,236.04, and as a means of correcting it the course adopted by the accounting officers was to withhold payments of amounts due upon the director general's bills for services on plaintiff's lines until these withheld amounts equalled the amount of the supposed overpayment on plaintiff's bills. The director general's bills were accordingly underpaid from time to time or deductions were made from them to the amount of $14,236.04. While such a course, if unobjected to and allowed to stand, would reimburse the Government to the extent of the supposed overpayment on plaintiff's bills, it would accomplish this result at the expense of the director general's bills unless credit be given him in a like amount against the sum he received upon plaintiff's account. As a matter of fact, as hereinafter stated, the director general did account for the net sum remaining after deducting from the amount of the collected checks the amount of the underpayments of or deductions from his own bills. In this connection it may be observed that one of the important differences between the facts now found and those in the former hearings is
32 that contrary to what appeared formerly when the disbursing officer's checks for plaintiff's bills were received there was in fact no entry made of credit to plaintiff company, nor was a charge or debit made upon the books against plaintiff for the underpayments of the director general's bills. The matter, so far as actual book entries are concerned, was in abeyance, except as already stated the fact of the receipt of the proceeds of the checks properly appeared in the director general's books. It was not until the 18th day of February, 1920, within a few days of the date fixed for the termination of Federal control, that an agreement such as was authorized by the act of March 21, 1918, was entered into between the director general and the plaintiff (the Philadelphia & Reading and affiliated companies). This agreement mentions the properties taken under Federal control, and does not expressly name uncollected assets of the companies arising out of transactions occurring or services rendered prior to Federal control. There is at least, however, an implied

recognition of them in the provision of the agreement relative to the accounting by the director general for all amounts received by him "in cash or collected * * * by him from current operating assets belonging to the companies," and also in the requirement that at the end of Federal control the director general shall return to the companies all uncollected accounts received by him from them, as well as by other provisions of the agreement and the act under the authority of which it was made.

On the 30th day of June, 1922, an agreement, designated final settlement, was entered into between the director general and plaintiff's companies. Its declared purpose was to evidence a complete and final settlement of "all demands of every kind * * * as between the parties * * * growing out of the Federal control of railroads," except some specified matters not material here. On or about August 25, 1920, preceding the final settlement mentioned, a settlement had been made between the War Department and the director general of all unsettled accounts for transportation furnished during the period of Federal control, the War Department paying him the sum of more than thirty-eight millions of dollars.

By the petition here filed, as above stated, in December, 1920, recovery is sought for the amounts alleged to have been deducted from plaintiff's bill because of the comptroller's ruling (24 Comp. Dec. 774) relative to free transportation of impedimenta accompanying troop movements, the petition also claiming additional amounts which it is alleged the disbursing quartermaster deducted from its bills "as if the shipments had consisted of emigrant movables under current rulings of the comptroller." These two general classes of claims will be considered separately.

1. As to the right to a deduction from plaintiff's bills for services rendered prior to Federal control because of the comptroller's ruling to the effect that the Government was entitled to a free car for each 25 men (24 Comp. Dec. 774), this court has in several cases held the opposite view to be correct. The Government has accordingly been required to pay sums disallowed by the accounting officers upon the theory mentioned. If, therefore, the sum of the items involved in this branch of the case, namely, $14,236.04, had been deducted from plaintiff's bills and Federal control had not intervened
33 vened there can be no question that plaintiff would be entitled to recover the amount of the deduction. (See Missouri Pacific Ry. Co., 56 C. Cls. 341.) Under the facts now appearing from the findings we think that the right of recovery is unimpaired by the intervention of Federal control or by the settlement between the parties relative to Federal control. To make plain our views on this question may involve some repetition of facts already stated and we repeat them for the further reason that facts appear in some other cases of this class that may call for a differentiation of this case. The items in plaintiff's bills involved in this case were for services rendered prior to Federal control. They were not paid to

plaintiff but checks for them were collected by the director general amounting to $26,157.20. Included in this amount is $1,257.19, concerning which there is no controversy, and there remains after deducting it $24,900.01. These collections by the director general were during the year 1918, between the dates February 2 and June 12, and, therefore, were prior to the decision of the comptroller mentioned (24 Comp. Dec. 774), rendered June 18, 1918. These dates are important in considering the effect to be given the action of the director general in crediting plaintiff with the difference between his collection in 1918 of plaintiff's bills and the amounts subsequently withheld from his own bills by the accounting officers under the operation of the comptroller's ruling. Owing no doubt to the great number of bills coming before them during the periods in question the accounting officers did not conclude the auditing of the director general's bills for transportation by him over plaintiff's lines until long after the payment on plaintiff's bills had been made, but on June 18, 1918, the decision of the comptroller had been rendered. Whilst these collections of plaintiff's bills were made in 1918, and before this decision, it was not until divers times during 1920 that the director general's bills were subjected to the stated underpayments or deductions. In the meantime he held the proceeds of the collections subject to a proper accounting with plaintiff. That decision was, of course, controlling upon the accounting officers, and reasonably enough the director general would not seek to question it. If he did not accept the comptroller's views he manifestly would take upon himself the burden of establishing the contrary. The natural thing for him to do was to leave the matter where the action of the accounting officers placed it and hold himself responsible to plaintiff for what remained after applying the accounting officer's claim. This course would not prevent plaintiff subsequently asserting its claim against the Government for the amount withheld, but would leave the plaintiff and the Government free to settle their own differences. And as bearing further on the reasonableness of this course by the director general, it may be noted that it was after the transactions mentioned had occured—after the collections by him and the subsequent underpayments of or deductions from his own bills—that this court decided that the ruling of the comptroller was erroneous. (See Missouri Pacific Railroad Co. case, supra, decided June 13, 1921.) Thus the ruling of the comptroller, until authoritatively held erroneous by the courts, was binding upon the parties concerned during the times involved in the collections and in the underpayments or deductions, and there was no legal duty upon the
34 director general to question its correctness so far as these items were concerned. When notified, as already stated, that he had been overpaid by the disbursing officer on plaintiff's bills, and while he yet had in possession and control the collections, not having paid them over to plaintiff, he could with perfect propriety accede to the demand for a return of the supposed overpayments.

(See Story on Agency (9th ed.) par. 300; Cary v. Curtin, 3 How. 236, 249.) If it were necessary to find that the companies in whose right the collection was made had acquiesced in or ratified the director general's action in submitting to the deduction from his own accounts in order to reimburse the Government for the supposed overpayments, it would seem that such a finding would be supported by the fact that after the underpayments or deductions were made the plaintiff brought this suit in which it treats these deductions as though made from its own accounts. We are not left in uncertainty as to what occurred with reference to these items of collection when the preliminary statements of accounts incident to the final settlement and the settlement itself were concluded in June, 1922. The facts definitely show that in the class of items called corporate transactions there was credited to plaintiff an item of $10,663.97, which is the exact difference between the entire amount collected, as already stated, $24,900.01, upon plaintiff's bills and the underpayments or deductions from the director general's bills. These "corporate transactions" were of things occurring prior to Federal control. It thus is certain that the director general has accounted to the plaintiff for the balance in his hands of his collection of the plaintiff's bills mentioned. The Government having made itself whole by underpaying, or deducting from the director general's bills the supposed overpayments on plaintiff's bills, and the director general having accounted to plaintiff only for the balance, it is manifest that the plaintiff is the only person who can complain. It now treats the deductions as made from its own bills, and this is the effect of what was done. It sues to recover the amount of these deductions, which, as stated above, amount to $14,236.04, and we think it should recover this sum.

2. The other items of claim set up in the petition arise out of alleged deductions from plaintiff's bills made by the disbursing officer before paying any part of them. It is claimed not only that the deductions were improper, but that they were made before the checks already mentioned were issued. The facts show, however, that bills were presented to the disbursing officer stated according to certain tariff charges, which that officer notified plaintiff he was not authorized to pay. Thereupon the plaintiff's bills were voluntarily restated upon the basis of class D rates, and as thus restated the bills were paid without objection or protest by plaintiff. This branch of the case is controlled by the decided cases. (See Oregon-Washington Ry. Co., 255 U. S. 339, 54 C. Cls. 131; Baltimore & Ohio R. R. Co., 52 C. Cls. 468.)

The plaintiff should have judgment for the items involved in the first branch, $14,236.04, but as to those in the second branch, the petition should be dismissed. And it is so ordered.

GRAHAM, Judge; HAY, Judge; DOWNEY, Judge; and BOOTH, Judge, concur.

Court of Claims of the United States

No. 34747

READING COMPANY v. THE UNITED STATES

*Appendices A, B, C*

35 APPENDIX A

United States Railroad Administration

Director General of Railroads

GENERAL ORDER NO. 17

WASHINGTON, D. C., *April 3, 1918.*

*To Chief Executive Officers of Carriers Subject to Federal Control:*

It is hereby ordered that the following rules and regulations shall be observed and shall govern the recording of and accounting for all transactions which arise during Federal control:

(1) For accounting purposes Federal control began as of January 1, 1918. Immediate steps shall be taken by each carrier subject thereto, to open new and separate books of accounts, such as cash books, general and subsidiary ledgers and journals, and all supporting and subsidiary books and records incident thereto, upon which shall be recorded transactions which arise under and are incident to Federal control on and after January 1, 1918. Such books shall be designated and are hereinafter referred to as "Federal books."

(2) The totals of the accounts "Cash," "Demand loans and deposits," and "Time drafts and deposits" appearing on the corporation's books as of December 31, 1917, shall be transferred to the Federal books, debited to accounts of the same titles, and credited to a deferred liability account styled "(Name of corporation)—Cash—December 31, 1917." On the corporate books the amount of such balances should be transferred to a deferred asset account styled "U. S. Government—Cash—December 31, 1917." All cash transactions subsequent to December 31, 1917, relating to operations prior or subsequent thereto, shall be recorded in the Federal cash book opened as of January 1, 1918.

(3) The total of account "Net balance receivable from agents and conductors" appearing on the corporation's books as of December 31, 1917, shall be transferred to the Federal books, debited to an account of the same title, and credited to a deferred liability account styled "(Name of corporation)—Agents' and conductors' balances—December 31, 1917." On the corporate books the amount of such balances should be transferred to a deferred asset account styled "U. S. Government—Agents' and conductors' balances—December 31, 1917."

(4) The total of account "Materials and supplies" appearing on the corporation's books as of December 31, 1917, shall be transferred to the Federal books, debited to an account of the same title, and credited to a deferred liability account styled "(Name of corporation)—Materials and supplies—December 31, 1917." On the corporate books the amount of such balance should be transferred to a deferred asset account styled "U. S. Government—Material and supplies—December 31, 1917."

(5) In addition to the assets above specified, there shall be likewise transferred to the Federal books and similarly recorded thereon, such other working assets of the corporation as may be mutually agreed upon.

(6) There shall be currently entered, upon such Federal books, in the manner and under the rules and regulations prescribed by the Interstate Commerce Commission or which may hereafter be prescribed, all transactions involving revenues, expenses, taxes and rentals, and other items corresponding to those which constitute the basis upon which the standard return to the carrier shall be determined. Such entries shall include corresponding assets and liabilities and the cash settlement thereof; also all transactions involving materials and supplies subsequent to December 31, 1917.

36 (7) Transactions of the corporation, including those arising out of cash receipts or disbursements, which do not affect or which do not enter into and form a part of those used in determining the basis of standard return, such as interest and dividends received or paid, miscellaneous rents, and other similar corporate transactions, including additions and betterments, shall not be recorded on or passed through such Federal books unless such transactions be negotiated and conducted for account of the corporation by or under the direction of the director general. Where such income transactions are negotiated and conducted by or under the direction of the director general the transactions shall be recorded on the Federal books but credited or charged to an account to be opened, styled "(Name of corporation)—Corporate income transactions." Concurrently, corresponding entries should be made on the corporate books charging or crediting the accounts prescribed by the Interstate Commerce Commission or which may hereafter be prescribed, the offset being in an account styled "U. S. Government—Corporate income transactions." Where additions and betterments are made by or under the direction of the director general, the expenditures shall be charged on the Federal books to a deferred asset account "(Name of corporation)—Additions and betterments." Concurrently, entries should be made on the corporate books, charging the appropriate accounts and crediting a deferred liability account "U. S. Government—Additions and betterments."

(8) Current or operating assets, other than those prescribed in paragraphs (2), (3), (4), and (5) hereof, such as balances due

from individuals and companies, and liabilities, such as vouchers, payrolls, etc., which were due to or by the corporation as of December 31, 1917, shall not be transferred in detail to the Federal books; but as and when such assets are collected or the liabilities are paid they shall be credited or debited, as the case may be, on the Federal books to a deferred liability account styled "(Name of corporation)—Assets, December 31, 1917, collected," or to a deferred asset account "(Name of corporation)—Liabilities, December 31, 1917, paid." There should be concurrently made, on the corporate books, corresponding entries debiting and crediting the U. S. Government with assets collected and liabilities paid.

(9) Transactions relating to operations, as defined in paragraph (6) hereof, if not previously accrued, shall be included in and shall form a part of the operating results of each carrier regardless of the date thereof. Items clearly applicable to the period prior to January 1, 1918, commonly called "lap-overs," shall be ascertained currently, set up on the Federal books, and included in the appropriate accounts as heretofore. At the end of each month, the total of "lap-over" credit items shall be charged to an unadjusted debit account styled "Revenue prior to January 1, 1918," and credited to a deferred liability account styled "(Name of corporation)—Revenue prior to January 1, 1918." The total of "lap-over" debit items shall be credited to an unadjusted credit account styled "Expense prior to January 1, 1918," and charged to a deferred asset account styled "(Name of corporation)—Expense prior to January 1, 1918." Operating revenues which have been accrued currently in accordance with the established practice of the carrier, shall be considered as current revenues and not as "lap-over" items.

(10) The accounts between the U. S. Government and the corporation, for which provision is made herein, shall be adjusted in such manner as may be hereafter agreed upon.

(11) Inquiries as to the interpretation and application of the provisions of this order and the procedure to be observed under its requirements shall be addressed to the director of public service and accounting.

W. G. McAdoo,
*Director General of Railroads.*

37 APPENDIX B

UNITED STATES RAILROAD ADMINISTRATION,
*Washington, February 24, 1920.*

GENERAL ORDER NO. 66

To provide accounting procedure incident to the termination of Federal control and to reestablish as of the end of Federal control the instructions relative to allocation of revenues and expenses as between the United States Railroad Administration and the corporations, applied as of the beginning of Federal control, it is ordered

that the following regulations be observed in accounting for transactions relating to the Federal control of transportation systems:

1. Books and accounts

The separate books of account, such as the Federal Treasurer's cash book, the general and the necessary subsidiary ledgers and journals, and all supporting books and records relating thereto, upon which are recorded transactions incident to Federal control and which have been designated as "Federal books," shall be continued in use after February 29, 1920, for the purpose of recording therein Federal control transactions after the period of Federal operation ceases and until further ordered. Transactions arising out of operations subsequent to February 29, 1920, shall not be entered on the Federal books, but should be entered on the corporate books; likewise all transactions not previously accounted for either on the Federal or corporate books relating to the period prior to Federal control should be entered on the corporate books and shall be omitted from the Federal books.

2. Cash

(a) The Federal Treasurer's cash book, in which is recorded the balance of cash on hand February 29, 1920, shall be continued in use after that date until further ordered, and all Federal control cash transactions arising after the end of Federal control shall be entered in such cash book in accordance with instructions here following.

(b) The total of the amount of cash, if any, transferred to the corporation from the cash in the hands of the Federal Treasurer in accordance with General Order No. 68 shall be charged on the Federal books to a deferred asset account styled "(Name of corporation)—Federal cash, February 29, 1920." The amount of such cash transferred should be entered in the corporate cash book, and
38 on the corporate general books should be debited to the appropriate account or accounts and credited to a deferred liability account styled "U. S. Government—Federal cash, February 29, 1920."

(c) The balance in the account appearing on the Federal books representing cash in transit applicable to accounts for the period prior to March 1, 1920, shall be charged on such books to a current asset account styled "(Name of corporation)—Federal cash in transit, February 29, 1920." On the corporate books corresponding entry should be made, debiting the appropriate account or accounts and crediting a current liability account styled "U. S. Government—Federal cash in transit, February 29, 1920." When such cash is received by the corporation it shall be paid over daily into the Federal cash account and entered on the Federal books as a credit to the account styled "(Name of corporation)—Federal cash in transit, February 29, 1920." On the corporate books correspond-

ing entry should be made debiting the account "U. S. Government—Federal cash in transit, February 29, 1920."

(d) When cash is realized from assets of the director general, the amount thereof shall be credited through the Federal cash book to the proper accounts. This refers to assets recorded as of February 29, 1920, and those subsequently recorded on the Federal books. This cash shall not be entered on the corporate books in any manner, except as provided in 2 (c), 2 (f) and section 7.

(e) All authorized payments of liabilities of the director general made out of Federal cash shall be charged on the Federal cash book to the proper accounts. Such payment should not be entered on the corporate books in any manner, except as provided in section 7.

(f) On and after March 1, 1920, all remittances (except those deposited in the Federal cash and accounted for as applicable to the agents' and conductors' accounts for February, 1920) received from agents and conductors shall, in the first instance be entered in the corporate cash book and credited to the appropriate accounts on the corporate general books. To the extent that items standing in the account "Agents' and conductors' balances" as of February 29, 1920, are included in such remittances, the amount shall be reported to the accounting department and the aggregate paid over daily into the Federal cash. Such payment should be charged on the corporate books to the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920." On the Federal books the payments shall be charged to "Cash" and credited to the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." This method of daily settlements shall apply to agents and conductors' unremitted cash on hand at midnight February 29, 1920, and to all collections made by agents and conductors during the month of March, 1920, applicable to bal-
39 ances of February 29, 1920. The balance in the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920," after such collections have been credited thereto shall be treated as an open account, includible on quarterly settlement Form AC–510.

3. Agents' and conductors' balances

(a) The total of the accounts representing amounts carried as due from agents and conductors appearing on the Federal books as of February 29, 1920, shall be transferred to the corporate books and debited on the Federal books to an account styled "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." On the corporate books the amount of such balances should be debited to the appropriate account or accounts and credited to a deferred liability account styled "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920."

(b) Any portion of the balance in the account representing agents' and conductors' balances at December 31, 1917, credited on the Fed-

eral books to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917," which was subsequently transferred from the agents' and conductors' accounts to accounts receivable, or other asset or liability accounts, other than those prefixed with the name of the corporation, or is in the balances carried to the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920," and is uncollected as of February 29, 1920, shall also be transferred on the Federal books to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917." On the corporate books the amount should be debited to the appropriate accounts and credited to the account "U. S. Government—Agents' and conductors' balances, December 31, 1917."

(c) If amounts representing advances and prepaid charges on waybills outstanding December 31, 1917, were transferred to the Federal books, the balances in the advances and prepaid accounts shall be transferred to the corporate books, and on the Federal books included in the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." On the corporate books the amount should be carried to the proper account or accounts, and should be included in the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920."

If amounts of advances and prepaid charges on waybills dated prior to January 1, 1918, transferred from the corporate to the Federal books and included in the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917," are outstanding as of February 29, 1920, the amounts thereof shall on the Federal books be transferred from the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920," to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917." On the corporate
40 books such amounts should be transferred from the account "U. S. Government—Agents' and conductors' balances, Federal, February 20, 1920," to the account "U. S. Government—Agents' and conductors' balances, December 31, 1917." The amounts to be transferred to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917," provided in paragraphs (b) and (c) of this section, shall be reported on Form AC–510 as for the first quarter of 1918.

(d) In the event that amounts included in the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920," set up on the corporate books as provided in paragraph 3 (a) hereof are later found to be chargeable to such accounts as "Material and supplies," "Additions and betterments," "Individuals and companies," or other accounts on or properly includible on the Federal books, entry should be made on the corporate books charging the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920," crediting the amount thereof to agents' and conductors' accounts. On the Federal books an entry covering

such items shall be made charging the appropriate account or accounts and crediting the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." Amounts relating to material and supplies shall be, on the Federal books, charged to the account "(Name of corporation)—Federal material and supplies, February 29, 1920," instead of to "Material and supplies." An additional entry on the corporate books should be made in respect to the amounts chargeable to "Material and supplies" account, debiting "Material and supplies" account and crediting "U. S. Government—Federal material and supplies, February 29, 1920."

4. Material and supplies

(a) The total of the account "Material and supplies" appearing on the Federal books as of February 29, 1920, shall be transferred to the corporate books and debited to a deferred asset account on the Federal books styled "(Name of corporation)—Federal material and supplies, February 29, 1920." On the corporate books the amount of such balance should be charged to the appropriate account and credited to a deferred liability account styled "U. S. Government—Federal material and supplies, February 29, 1920."

(b) All material and supplies received prior to March 1, 1920, shall be accounted for in the Federal books. All invoices for such material and supplies referred to in the previous sentence as are vouchered after the close of the accounts for the month of February, 1920, shall be covered by Federal form of vouchers and the cost of all such material and supplies shall be added to the account "(Name of corporation)—Federal material and supplies, February 29, 1920." On the corporate books the amount of such vouchers should be charged to appropriate account for material and supplies and credited to the account "U. S. Government—Federal material and supplies, February 29, 1920."

41 (c) Amounts paid prior to March 1, 1920, for material and supplies not received at midnight February 29, 1920, shall not be included on the Federal books in the account representing stock of material and supplies or in the account "(name of corporation)—Federal material and supplies, February 29, 1920." Neither shall material represented thereby be included in the inventory taken in accordance with the provisions of General Order No. 62. Such amounts shall instead be charged on the Federal books to an appropriate deferred asset account.

When the material and supplies therefor are received, or used by the corporation, the amounts shall, on the Federal books, be charged to the corporation through a deferred asset account styled "(Name of corporation)—Federal assets collected," and should, on the corporate books, be charged to the appropriate account and credited to a deferred liability account styled "U. S. Government—Federal assets collected."

(d) Material and supplies ordered prior to March 1, 1920, received and paid for by the corporation subsequent to February 29, 1920, shall not be entered in the Federal accounts in any manner.

5. Other accounts transferred

(a) In addition to the asset accounts above specified, there shall be likewise transferred to the corporate books other asset accounts of the Federal administration, similar to those sundry asset accounts which were taken over on the Federal books in the separation of accounts at the beginning of Federal control or subsequent thereto. The items here referred to are such as insurance premiums paid in advance, taxes paid in advance. Additional items of miscellaneous assets (for example, material loaned or leased), or liabilities, should be similarly transferred as may be mutually agreed upon.

Subsequent to February 29, 1920, cash vouchers should not be made for reimbursement of working funds expended during February, 1920, and previous months, but if such expenditures are approved the amounts thereof shall, on the Federal books, be charged to the appropriate accounts and credited to the working-fund account. It is suggested that the corporation take over the balance of cash in working funds by paying the aggregate amount thereof into the Federal cash.

Hospital and other funds for which the railroad is custodian shall be disposed of in accordance with General Order No. 68.

If during the period of Federal operations amounts representing overcharge freight claims paid out of Federal funds, affecting traffic, the revenues from which were included in corporation revenue or credited to it as lap-over revenue on the Federal books, or amounts representing loss and damage claims paid out of Federal funds chargeable to the period prior to Federal control, were carried
42 on the Federal books in suspense accounts pending adjustment thereof with other carrier corporations, or pending receipt of additional information wherewith to dispose of the amounts carried, and such amounts are carried in suspense account as of February 29, 1920, they shall be charged to the corporation. Such amounts shall on the Federal books be charged to the account "(Name of corporation)—Corporate transactions," and on the corporate books should be charged to an appropriate suspense account and credited to the account "U. S. Government—Corporate transactions."

(b) The value of mileage scrip introduced during Federal control, sold on or prior to February 29, 1920, and honored subsequently, shall be credited on the Federal books to the account "(Name of corporation)—Federal mileage scrip," and entry should be made on the corporate books charging "U. S. Government—Federal mileage scrip." Such scrip collection should not be destroyed until the account has been audited by administration accountants, or unless permission is obtained from the comptroller of the Railroad Administration. If in the establishment of accounts at the beginning of

Federal control the mileage liability on the corporate books was made subject to an equitable adjustment when it appeared that no further mileage would be presented, a similar arrangement will be made as to the balance on the Federal books as of February 29, 1920.

6. Allocation of revenues and expenses

(a) Railway operating revenues and taxes shall be allocated to the period of Federal and corporate operations in accordance with the provisions of the standard agreement.

(b) Railway operating expenses, reparation and other claims, hire of equipment and joint facility rents, and any other accounts (except as provided in par. (a)), which constitutes the basis of the standard return, shall be allocated with reference to the time when incurred as between the period of Federal control and the period prior and subsequent thereto.

7. Recording Federal control transactions and lap-over revenues and expenses

(a) There shall be entered currently after February 29, 1920, upon the Federal books referred to in section 1 hereof, record of all transactions arising out of Federal control.

(b) Bills for accounts collectible and vouchers for accounts payable covering all transactions arising out of Federal operations shall be prepared, respectively, on United States Railroad Administration bill and voucher forms, recorded in the appropriate Federal bill and voucher registers, and charged or credited on the Federal books to the appropriate accounts.

43 (c) It is desired that transactions arising out of Federal control should not be entered in the corporate books in any manner; likewise it is desired that corporate transactions should not be included in the Federal accounts. However, it may be necessary in exceptional cases, as in the case of interline freight and passenger transactions, to include Federal transactions in the corporate accounts or corporate transactions in the Federal accounts. In such cases the amounts due to or from the Federal management should be credited on the corporate books to a deferred liability account styled "U. S. Government—Federal assets collected" or debited to a deferred asset account styled "U. S. Government—Federal liabilities paid," as may be appropriate. In the Federal books such amounts shall be included, as may be appropriate, in a deferred liability account styled "(Name of corporation)—Federal liabilities paid" or in a deferred asset account styled "(Name of corporation)—Federal assets collected."

The net amount of cash realized or paid in settlement of lap-over revenues and expenses of the Federal period should be ascertained and appropriate cash settlement made monthly. The amounts thereof shall be entered on the Federal cash books and shall be debited or credited as may be appropriate to the accounts "(Name of corpora-

tion)—Federal assets collected" or "(Name of corporation)—Federal liabilities paid." Corresponding contra-entries should be made on the corporate books.

(d) If Federal revenue and expense items are reported and included in the revenue or expense accounts stated on the corporate books, as in the case of interline freight accounts, such amounts shall be accumulated in monthly totals from the corporate book records and accounted for as follows:

The total credit to the Federal income accounts should be charged on the corporate books to the appropriate primary revenue accounts and credited to the Federal management through the account "U. S. Government—Federal assets collected."

On the Federal books the same amounts shall be charged to the corporation through the account "(Name of corporation)—Federal assests collected" and credited to the appropriate primary revenue account.

The total debit to the Federal income accounts should be credited on the corporate books to the appropriate expense or other accounts and charged to the Federal management through the account "U. S. Government—Federal liabilities paid."

On the Federal books the same amounts shall be credited to the corporation through the account "(Name of corporation)—Federal liabilities paid" and charged to the primary operating expenses or other accounts.

(e) In order to preserve the continuity of the income accounts and statistics of carriers, that such income accounts and statistics
44 may be complete, and that there shall not be omitted therefrom amounts which would have been included in the appropriate accounts had there been no Federal control of railroads, at the end of each audit month, the total of the amounts, appearing on the Federal books, charged and credited to the accounts forming the basis upon which the standard return was determined, should be charged and credited on the corporate books to the appropriate primary revenue, expense or income accounts and debited or credited to subaccounts of Income Accounts Nos. 519 and 551, as the case may be, styled "Revenues Federal" or "Expenses Federal," as may be appropriate. No corresponding adjusting entry shall be made on the Federal books of the individual carriers. Such an entry will be made in Washington based on the aggregate totals of the monthly reports made in response to the provisions of Accounting Circular No. 82.

8. Monthly and quarterly reports

Monthly and quarterly reports in accordance with provisions of Accounting Circulars Nos. 55 and 82, shall be rendered until the accounts on the Federal books are completely liquidated or adjusted, or until otherwise ordered.

The balances on the Federal books in all accounts prefixed with the name of the corporation authorized by this order shall be closed

monthly to "Administration ledger control account" in accordance with Accounting Circular No. 82 and, except as to the account "(Name of corporation)—Federal material and supplies, February 29, 1920," shall be reported on Form AC–510 in accordance with Accounting Circular No. 55.

9. General

Where the property was taken over for Federal operation at a date subsequent to December 31, 1917, the date as of which such property was taken over should be substituted for December 31, 1917, wherever mentioned in this order.

The foregoing instructions shall not apply as to those lines of railroads in the United States under Federal operation at midnight February 29, 1920, that are operated thereafter as parts of a common carrier system or systems in countries adjacent to the United States, and whose treasurer and accounting officer and general accounts are located in those countries. In such cases special instructions will be given by the comptroller.

Inquiries as to the interpretation and application of the provisions of this order and the procedure to be observed under the requirements shall be addressed to Mr. Geo. H. Parker, comptroller.

WALKER D. HINES,
*Director General of Railroads.*

45 UNITED STATES RAILROAD ADMINISTRATION,
*Washington, June 11, 1920.*

GENERAL ORDER NO. 66–A

Paragraph (e) of section 7 of General Order No. 66 is hereby cancelled.

JOHN BARTON PAYNE,
*Director General of Railroads.*

46 APPENDIX C

FINAL SETTLEMENT

This agreement, entered into this 30th day of June, A. D. 1922, by and between James C. Davis, Director General of Railroads and agent of the President, acting on behalf of the United States and the President, hereinafter called the "director general," and the Philadelphia and Reading Railway Company, Atlantic City Railroad Company, Catasauqua and Fogelsville Railroad Company, the Chester and Delaware River Railroad Company, the Gettysburg & Harrisburg Railway Company, Middltown & Hummelstown Railroad Company, the North East Pennsylvania Railroad Company, Perklemen Railroad Company, the Philadelphia and Chester Valley Railroad Company, the Philadelphia Newtown and New York Rail-

road Company, Pickering Valley Railroad Company, the Port Reading Railroad Company, Reading and Columbia Railroad Company, the Rupert and Bloomsburg Railroad Company, Stony Creek Railroad Company, the Tamaqua, Hazleton & Northern Railroad Company, the Williams Valley Railroad Company, the Philadelphia Grain Elevator Company, and the Delaware River Ferry Company of New Jersey, hereinafter called the "companies," witnesseth:

The said director general hereby acknowledges payment of the sum of eight million dollars ($8,000,000.00) by the said companies, the receipt whereof is hereby acknowledged, in full satisfaction and discharge of all claims, rights, and demands, of every kind and character, which the said director general, or any one representing or claiming to represent the director general, the United States, or the President, now has or hereafter may have or claim against the said companies, or any of them, growing out of or connected with the possession, use, and operation of the companies' property by the United States during the period of Federal control, or out of the contract between the parties dated the 18th day of February, 1920; and the said companies, both jointly and severally, hereby acknowledge the return to and receipt by them of all their property and rights which they are entitled to, and further acknowledge that the director general has fully and completely complied with and satisfied all obligations on his part, or on the part of the United States, or the United States Railroad Administration, growing out of Federal control."

The purpose and effect of this instrument is to evidence a complete and final settlement of all demands, of every kind and character, as between the parties hereto, growing out of the Federal control of railroads, save and except that the following matters are not included in this adjustment and are not affected thereby:

Exceptions

1. The obligation on the part of the companies, as expressed in the standard form of contract between the director general and the companies, as to the conduct of litigation arising out of Federal control (except as to claims and suits of carriers against the director general or the United States), as same is stated in paragraph (f) of section 9 of said contract, is to continue and is not affected by this settlement.

2. This settlement does not include or affect any moneys or assets of the director general turned over to the companies pursuant to General Order No. 68, the account created by this order to be adjusted as though this agreement had not been made.

3. This settlement does not include the obligations of the director general assumed in paragraphs (i) and (j) of section 4 of said contract, to save the companies harmless as to claims, if any, of third persons, or the obligations of the director general in respect to the

payment of taxes under section 6 of the contract; provided further,
that this settlement does not include claims, suits, and judg-
47 ments based on causes of action arising between twelve o'clock,
noon, December 28th, 1917, and twelve o'clock, midnight, of December 31st, 1917, during which period the carriers assume all liability.

4. This settlement does not affect or alter any obligation executed by the companies, or any of them, for amounts loaned, advanced, or funded by the director general, or amounts due by reason of any equipment trust agreements, all such obligations on the part of the companies to remain in full force, the same as if this agreement had not been entered into.

In witness whereof the parties to this agreement have duly signed, sealed, and executed same in quadruplicate, such agreement being duly executed by the president of each of the companies and attested by the secretary, with the corporate seal hereto annexed, and the said president hereby certifies that he has been duly authorized to execute and deliver this agreement on the part of each of the companies by a vote of the respective boards of directors of said companies.

(Then follows the signature of James C. Davis, Director General of Railroads and agent of the President, and Agnew T. Dice, president of the various railroad companies, comprising the Reading system, and attested by the secretary thereof, J. V. Hare.)

48 VII. *Judgment*

At a Court of Claims held in the city of Washington on the 5th day of January, A. D. 1925, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the plaintiff, and do order and adjudge that the plaintiff, as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of fourteen thousand two hundred and thirty-six dollars and four cents ($14,236.04).

By the COURT.

VIII. *Defendant's petition for appeal*

(Filed April 3, 1925)

From the judgment rendered in the above-entitled cause on the 5th day of January, 1925, in favor of claimant, the defendants' by their Attorney General, on the 3rd day of April, 1925, make application for, and give notice of, an appeal to the Supreme Court of the United States.

HERMAN J. GALLOWAY,
*Assistant Attorney General.*

IX. *Order allowing defendant's petition for appeal*

It is ordered by the court this 13th day of April, 1925, that the defendant's application for appeal be and the same is allowed.

49 X. *Plaintiff's petition for appeal*

Filed April 4, 1925

The plaintiff in the above case makes application for an appeal to the Supreme Court of the United States.

DUDLEY & MICHENER,
*Attorneys for Plaintiff.*

XI. *Order allowing plaintiff's petition for appeal*

It is ordered by the court this 13th day of April, 1925, that the plaintiff's application for appeal be as the same is allowed.

50 In Court of Claims of the United States

[Title omitted.]

I, F. C. Kleinschmidt, assistant clerk, Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the history of proceedings had in said case; of the final argument and submission of case; of the order of court entered January 5, 1925; of the findings of fact, conclusion of law, and opinion of the court by Campbell, Ch. J.; of the judgment of the court; of the applications of defendant and plaintiff for an appeal to the Supreme Court of the United States, and of the orders of the court allowing said applications.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this 17th day of April, A. D. 1925.

F. C. KLEINSCHMIDT,
*Assistant Clerk, Court of Claims.*

[Indorsement on cover:] File No. 31101, 31102. Court of Claims. Term No. 401; The United States, appellant, vs. Reading Company. Term No. 402; Reading Company, appellant, vs. The United States. Filed April 30th, 1925. File No. 31101, 31102.

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# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1925

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## No. 404

### THE UNITED STATES, APPELLANT

vs.

### THE ST. LOUIS, BROWNSVILLE & MEXICO RAILWAY COMPANY

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APPEAL FROM THE COURT OF CLAIMS

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56283—25——1

1 In Court of Claims of the United States

No. 236–A

THE ST. LOUIS, BROWNSVILLE & MEXICO RAILWAY COMPANY

*vs.*

THE UNITED STATES

I. *Petition*

Filed August 1, 1921

*To the Honorable, the Chief Justice and Judges of the Court of Claims:*

Your petitioner, the St. Louis, Brownsville & Mexico Railway Company, respectfully represents as follows:

I

Your petitioner, a corporation, owns and operates and at the times hereinafter mentioned owned and operated a line of railway extending from Houston to Brownsville, in the State of Texas, being a part of the system of railways known as the Gulf Coast Lines. Your petitioner as a common carrier, and in connection with other railroad carriers, is engaged in the transportation of passen-
2 gers and freight for hire, and has established tariffs for such transportation, which are duly published and filed with the Interstate Commerce Commission in accordance with law.

II

In June, 1916, in connection with other carriers, your petitioner transported for the United States Government, pursuant to government bill of lading No. 362, dated June 28, 1916, from Springfield, Illinois, to Brownsville, Texas, five (5) cars of horses, twelve (12) cars of wagons, and ten (10) cars of "camp equipment." For the said transportation your petitioner in due course submitted its bill No. 914–a, in the sum of $12,370.40, which was paid December 15, 1917. Subsequently the Auditor for the War Department determined that the said payment to your petitioner had been erroneously made, and deducted the whole amount thereof from compensation earned and due your petitioner for other and different transportation service, per Treasury Certificate 50644, dated February 7, 1920. The said action of the Auditor for the War Department was based upon decisions of the Comptroller of the Treasury of June 18, 1918 (No. 27942), and July 25, 1918 (No. 27963), holding that one carload of freight was entitled to go free, as a special baggage car, with each twenty-five passenger fares.

Your petitioner avers that the correct amount lawfully due for the said transportation was $5,881.53, based upon your petitioner's lawful tariff rates, to wit, as published in Southwestern Lines Tariff 1–J, I. C. C. 107; Southwestern Lines Tariff 29–U, I. C. C. 1121; and Southwestern Lines Exception 1–G, I. C. C. 1121, item 1468; the computation thereof being as follows:

3

| Current basis | | | Cents per # | |
|---|---|---|---|---|
| | | Springfield | 100 | |
| 5 cars horses | 120,000 | Cairo | $9.56 | $114.72 |
| | 188,230 | South | 56.72 | 1,067.64 |
| Car rental | | | | 200.50 |
| 12 cars wagons | 144,000 | Through | 83.24 | 1,198.66 |
| 10 cars camp equipment | 300,000 | Through | 110 | 3,300.00 |
| Total | | | | $5,881.52 |

## III

In July, 1916, in connection with other carriers, your petitioner transported for the United States Government, pursuant to Government bill of lading No. WQ–1, dated July 8, 1916, from Yonkers, New York, to McAllen, Texas, certain gun carriages, limbers, horses, vehicles, and other troop and camp impedimenta. For the said transportation your petitioner in due course submitted its bill No. 1369-a in the sum of $6,401.34. The said bill was subsequently restated in the sum of $2,650.87, and was disallowed in full by the zone finance office (file 554–4–T. S. Johnston, War Department voucher 1548, January, 1918). The said disallowance was based upon decisions of the Comptroller of the Treasury June 18, 1918 (No. 27942), and July 25, 1918 (No. 27963), holding that one carload of freight was entitled to go free, as a special baggage car, with each 25 passenger fares.

Your petitioner avers that the correct amount lawfully due for the said transportation was $2,650.87, based upon your petitioner's lawful tariff rates, to wit, as published in Southwestern Lines

4 Tariff I–j, I. C. C. 107; Southwestern Lines Exception 1–G, I. C. C. 1121, item 1463; Western Classification No. 53; and Pennsylvania Railroad Tariff I. C. C. 6879, governed by official classification No. 44.

## IV

In April and May, 1919, in connection with other carriers, your petitioner transported for the United States Government, pursuant to Government bills of lading Nos. 3179, 80178, 79922, 70611, 2941, 2942, 2940, 2939, and 1830, from eastern points to stations on your petitioner's line, certain sheeting, lumber, and troops and camp impedimenta. For the said transportation your petitioner in due course submitted its bill No. 1629-a in the sum of $2,256.65. In making settlement for the said transportation the Auditor for the War Department by his certificate No. 50687 of February 9, 1920,

disallowed the sum of $2072.72, his said action being based upon decisions of the Comptroller of the Treasury of June 18, 1918 (No. 27942), and July 25, 1918 (No. 27963), holding that one carload of freight was entitled to go free, as a special baggage car, with each twenty-five passenger fares.

Your petitioner avers that the correct amount lawfully due for the said transportation was $2,256.65, based upon your petitioner's lawful tariff rate, to wit, as published in Southwestern Lines Tariff 1–j, I. C. C. 107, and Southwestern Lines Exception 1–G, I. C. C. 1121, item 1468.

5 V

In July, 1916, in connection with other carriers, your petitioner transported for the United States Government, pursuant to government bills of lading dated July 11, 1916, from Green Haven, New York, to McAllen, Texas, and on July 2, 1916, from Brownsville, Texas, to McAllen, Texas, certain troop and camp impedimenta. For the said transportation your petitioner in due course submitted its bill R–2261–A, in the sum of $1316.67. In making settlement for the said transportation, the Auditor for the War Department, by his certificate No. 597991/2, dated February 10, 1921, disallowed the sum of $786.03, his action being based upon decisions of the Comptroller of the Treasury heretofore referred to in paragraphs 2, 3 and 4 of this petition.

Your petitioner avers that the correct amount lawfully due for the said transportation is $1316.67, based upon your petitioner's lawful tariff rates, to wit, as published in Southwestern Lines Tariff 1–J, I. C. C. 107, and Southwestern Lines tariff, 29–U, I. C. C. 1121, Exceptions 1–G, item 1468.

VI

In October, 1916, in connection with other carriers, your petitioner transported for the United States Government, pursuant to government bill of lading, dated October 11, 1916, from Rifle Range, Colorado, to Brownsville, Texas, and from Denver, Colorado, to Brownsville, Texas, certain troop and camp impedimenta. For the
6 said transportation your petitioner in due course submitted its bill No. 3246–A, in the sum of $3,486.78. In making settlement for the said transportation, the accounting officers of the Government disallowed the said bill in full, such action being based upon decisions of the Comptroller of the Treasury heretofore referred to in this petition. Your petitioner avers that the correct amount lawfully due for the said transportation was $3,508.02, based upon your petitioner's lawful tariff rates, to wit, as published in the following tariffs:

Denver and Intermountain Tariff, 6D, I. C. C. 20.

Southwestern Lines Tariff, 14–B, I. C. C. 1123 (Horses).

Southwestern Lines Tariff, 29–U, I. C. C. 1121, Supplement 1, item 1278 (Horses).

Southwestern Lines Tariff, 14–B, I. C. C. 1123 (Camp Equipment).

Southwestern Lines Tariff, 14–B, I. C. C. 1123, item 4352 (Wagons).

Southwestern Lines Tariff, 32–Q, I. C. C. 1151 (Hay).

Southwestern Lines Tariff, 32–Q, I. C. C. 1151 (Oats).

## VII

In November and December, 1917, in connection with other carriers, your petitioner transported for the United States Government, pursuant to government bills of lading Nos. 257, 361 and 363, dated November 30, December 1, and December 1, 1917, respectively, from Fort Riley, Kansas, to McAllen, Texas, certain horses, wagons, and troop and camp impedimenta. For the said transportation your petitioner, in due course, submitted its bill No. 5888–A, in the
7 sum of $8,743.45. For the said transportation, settlement was made by the zone finance office, file 554–4–T–T. B. Johnston, voucher 3451, but subsequently the accounting officers of the Government disallowed the full amount, and deducted from your petitioner's bills No. G–2107, 2111, and 2218, subsequently rendered for other and different services, the full amount of all payments which had been made for the transportation herein referred to, the said action of the accounting officers being based upon the decisions of the Comptroller of the Treasury heretofore referred to.

Your petitioner avers that the correct amount lawfully due for the said transportation was $8,953.09, based upon your petitioner's lawful tariff rates, to wit, as published in Southwestern Lines Tariff 42–N, I. C. C. 1173, subject to western classification No. 54, and Southwestern Lines Exception Circular No. 1–G.

## VIII

In December, 1917, in connection with other carriers, your petitioner transported for the United States Government, pursuant to Government bills of lading No. WQ–364, 356, and 355, dated December 1, 1917, from Fort Riley, Kansas, to Sam Fordyce, Texas, certain horses, wagons, and troop and camp impedimenta. For the said transportation your petitioner in due course submitted its bill No. 5892–A, in the sum of $8,695.73, which was paid in March, 1918, by the zone finance office (File 554–4–1–T. B. Johnston, voucher 5871). Subsequently the Auditor for the War Department determined that the said payment to your petitioner was erroneously made,
8 and deducted the whole amount thereof from compensation earned and due your petitioner for other and different transportation service, per Treasury Certificate No. 51241, dated February 24, 1920. The said action by the Auditor for the War

Department was based upon decisions of the Comptroller of the Treasury heretofore referred to in this petition.

Your petitioner avers that the correct amount lawfully due for the said transportation was $8,695.73, based upon your petitioner's lawful tariff rates, to wit, as published in Southwestern Lines tariff 42-N, I. C. C. 1173, subject to western classification No. 54, and Southwestern Lines Exceptions Circular No. 1-G.

## IX

Your petitioner avers that the property shipped on the said bills of lading, as above stated, was not and could not lawfully have been carried in baggage cars, and was in no sense baggage within the common and known meaning of that term, or as used in your petitioner's published tariffs or those of its connecting carriers, but that the said property consisted entirely of camp and troop equipment or "impedimenta," including among other things, wagons, guns, limbers, horses, kitchen outfits, ammunition, forage, and similar property, and that the action of the accounting officers of the United States Government in disallowing your petitioner's bills rendered for such transportation service, based upon your petitioner's lawfully published tariffs, and in refusing payment to your petitioner, was and is illegal.

9

## X

Your petitioner further avers that the said disallowances and the attempted application of special baggage car tariffs were erroneous and improper by reason of the provisions of certain agreements entered into between your petitioner and other railroad carriers and the United States Government on the subject of fares and allowances for the transportation of military traffic, to wit, an agreement referred to as western military arrangement, dated April 1, 1916, effective July 1, 1916, and (2) an agreement referred to as interterritorial military arrangement, dated December 28, 1916, effective January 1, 1917. The said interterritorial military arrangement, effective January 1, 1917, included the following:

"III

"Traffic Covered by this Arrangement

"The net fares allowances and routes in connection therewith, authorized hereunder, are applicable exclusively for the transportation of officers and enlisted men and others connected with the United States Army, United States Navy and United States Marine Corps, for whom the United States is lawfully entitled thereto, and when traveling on transportation requests of the issues of the United States Army, United States Navy and United States Marine Corps and at United States Government expense only.

"IV

"Net Fares and Allowances

"(1) (a) The fares applicable under this arrangement will
10 be the lawful commercial fares as on file with the Interstate Commerce Commission from starting point, to destination at time of movement (see exceptions, Section V), less lawful land-grant deductions properly established, less five per cent (5%), the five per cent allowances not to exceed the maximum allowances or exceptions as specified in Section VI. Government fares so established will apply to all military traffic as described in Section III, including special train and special car movements as well as individual and party movements (see Section XI).

"(b) Proportions will not be used in any case in the construction of fares.

* * * * * * *

"XV

"Baggage

"(1) One hundred and fifty (150) pounds of personal effects, properly checkable as baggage, under the tariff of the initial carrier, will be transported without charge for each person. Personal baggage in excess of the free allowance stated when provision for the transportation of the excess baggage is specially made in United States Army, Navy, or Marine Corps transportation requests and is paid for by the United States Government, will be charged for at the regular excess baggage rate, based upon the net individual fare. When provision is not made in the transportation request for the transportation of excess baggage, collection will be made from the traveler at the regular commercial rate for weight in excess of the free allowance stated. Excess baggage charges will not be subject to allowances applicable in connection with the fares for tickets under this arrangement. Baggage regulations in other
respects than above will be in accordance with the tariff of
11 the initial carrier checking the baggage in each case.

"(2). Company, battalion, regimental or Government property is not included in the above."

The said interterritorial military arrangement was an agreement proposed by and executed by the authorized representatives of the carriers throughout the United States, and accepted and executed on behalf of the United States by the Quartermaster General of the Army, United States War Department, the Chief of the Bureau of Navigation, United States Navy Department, and the Quartermaster, United States Marine Corps. Your petitioner and all connecting carriers participating in the movements herein referred to were parties to the said agreement.

## XI

That the total sum of $32,547.98, is now justly due and owing your petitioner from the United States as aforesaid.

## XII

Your petitioner avers that no action has been had on this claim by Congress or by any of the executive departments of government other than as above stated; that there exists no debt, counterclaim, or set-off by which the said claim may or should be reduced; that no part thereof has been paid; that the said claim has not been assigned in whole or in part; that your petitioner is a citizen of the United States and has at all times borne true allegiance to the
12 Government of the United States, and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government.

Wherefore the premises considered, your petitioner prays judgment against the United States in the sum of thirty-two thousand five hundred forty-seven dollars and ninety-eight cents ($32,547.98).

THE ST. LOUIS, BROWNSVILLE AND
MEXICO RAILWAY COMPANY,
By J. S. PYEATT, *President.*

[Sworn to by J. S. Pyeatt, jurat omitted in printing.]

13 II. *General traverse*

October 1, 1921

No demurrer, plea, answer, counterclaim, setoff, claim of damages, demand, or defense in the premises having been entered on the part of the defendant, a general traverse is entered as provided by Rule 34.

III. *History of proceedings*

On March 3, 1924, this case was submitted on merits, on stipulation of parties without argument, by Messrs. Britton & Gray, for the plaintiff, and by Mr. Perry W. Howard, for the defendant.

On June 2, 1924, the court filed an order referring this and other similar cases to George M. Anderson, commissioner, to ascertain and report the facts, and leave was granted to both sides to file exceptions to said report.

On July 31, 1924, the said special commissioner filed his report and findings of fact.

On October 13, 1924, the plaintiff, by leave of court, filed a brief on the findings of fact reported by commissioner.

IV. *Submission of case on report of special commissioner*

On October 29, 1924, this case was submitted on the report of the special commissioner, without argument, by Messrs. Britton & Gray, for plaintiff, and by Mr. Perry W. Howard, for defendant.

14 V. *Findings of fact and conclusion of law*

Filed January 5, 1925

This case having been heard by the Court of Claims upon the report of the special commissioner and the evidence, the court makes the following

*Findings of fact*

I

The plaintiff, a corporation, owns and operates and at the times hereinafter mentioned owned and operated a line of railroad extending from Houston to Brownsville, in the State of Texas, being a part of the system of railways known as the Gulf Coast Lines. The plaintiff is a common carrier, and, in connection with other railroads carriers, is engaged in the transportation of passengers and freight for hire and has established tariffs for such transportation, which are duly published and filed with the Interstate Commerce Commission as required by law.

II

At the time of the transportation hereinafter mentioned there were in force on the lines of the plaintiff company and other railroad carriers with which it connected, being the carriers who furnished the transportation hereinafter mentioned, certain special baggage car tariffs covering the territory through which the said troops and military impedimenta were moved, which stated in substance and effect the terms and conditions upon which associated travelers traveling on one ticket might become entitled to a baggage car free for the transportation of certain of their effects, on the basis generally of one car free to each twenty-five passengers.

III

Prior to July 1, 1916, the plaintiff, with other railroad carriers of the United States, entered into certain agreements with the United States Government on the subject of fares and allowances in connection with the transportation of military traffic, including the following:

15 "Revised military arrangement (Army), signed on behalf of the carriers by their duly authoritzed agents and on behalf

of the United States by the Quartermaster General of the Army; which was in effect from January 1, 1915, until July 1, 1916;

"Revised western military arrangement, dated April 1, 1916, signed on behalf of the carriers by their duly authorized agents and on behalf of the United States by the Acting Quartermaster General of the Army; which was in effect from July 1, 1916, to December 31, 1916;

"Interterritorial military arrangement 1, dated December 28, 1916, signed on behalf of the carriers by their duly authorized agents and on behalf of the United States by the Quartermaster General of the Army; which was in effect beginning January 1, 1917, and until December 31, 1920."

The said western military arrangement, effective January 1, 1915, and revised western military arrangement, effective July 1, 1916, contained among other provisions the following:

"One hundred and fifty (150) pounds of personal effects of officers and men properly checkable as baggage will be transported without charge for one person, but this does not include company, battalion, regimental, or Government property. Personal baggage in excess of the weight stated, when provision for transportation of same is specifically made in U. S. Army, U. S. Navy, or U. S. Marine Corps transportation request, will be charged for at the excess baggage rates less lawful land-grant deductions.

"When company, battalion, regimental, or Government property is moved on passenger trains it shall be subject to adjustment for each movement."

The said interterritorial military arrangement, effective January 1, 1917, contained among other provisions the following:

"III

"Traffic covered by this agreement

"The net fares allowances and routes in connection therewith authorized hereunder are applicable exclusively for the transportation of officers and enlisted men and others connected with the United States Army, United States Navy, and United States Marine Corps, for whom the United States is lawfully entitled thereto, and when traveling on transportation requests of the issues of the United States Army, United States Navy, and United States Marine Corps and at United States Government expense only.

"IV

"(1) (a) The fares applicable under this arrangement will be lawful commercial fares as on file with the Interstate Commerce Commission from starting point to destination at time of movement (see exception, Section V), less lawful land-grant deductions properly established, less five per cent (5%), the five per cent allow-

ance not to exceed the maximum allowances or exceptions as specified in Section VI. Government fares so established will apply to all military traffic as described in Section III, including special-train and special-car movements, as well as individual-party movements (see Section XI).

"(b) Proportions will not be used in any case in the construction of fares."

* * * * * * *

"XV

"Baggage

"(1) One hundred and fifty (150) pounds of personal effects, properly checked as baggage, under the tariff of the United States carrier, will be transported without charge for each person. Personal baggage in excess of the free allowance stated when provision for the transportation of the excess baggage is specially made in United States Army, Navy, or Marine Corps transportation requests and is paid for by the United States Government will be charged for at the regular excess-baggage rate, based upon the net individual fare. When provision is not made in the transportation request for the transportation of excess baggage, collection will be made from the traveler at the regular commercial rate for weight in excess of the free allowance stated. Excess baggage charges will not be subject to allowances applicable in connection with the fares for tickets under this arrangement. Baggage regulations in other respects than above will be in accordance with the tariff of the initial carrier checking the baggage in each case.

"(2) Company, battalion, regimental, or Government property is not included in the above."

IV

At various times in 1916 and 1917 the plaintiff, in cooperation with other carriers whose lines connected with the plaintiff's lines, transported upon Government bills of lading, as freight, numerous shipments of camp equipment and military impedimenta, the property of the United States, including wagons, guns, limbers, horses, kitchen outfits, ammunition, forage, and miscellaneous property of similar character.

V

For the said transportation the plaintiff, as final and delivering carrier, submitted bills to the proper officers of the Government, which said bills were based and computed upon the plaintiff's lawfully published tariff rates, less land-grant proportion. In the settlement of the said bills the disbursing and accounting officers of the Government made numerous disallowances and deductions, on the ground that the Government was entitled to the use of one bag-

gage car free with each 25 men transported in the accompanying movement of troops upon the authority of the special baggage car tariffs referred to in Finding II, supra. The said action of the disbursing and accounting officers of the Government was based upon the decisions of the Comptroller of the Treasury of June 18, 1918, July 25, 1918, and October 31, 1918. Some of the bills
17 in question were paid by the disbursing officer as rendered and deductions made from subsequent bills for other transportation service by the Auditor for the War Department.

VI

The Auditor for the War Department, in auditing the disbursing officer's account, disallowed payments made by him on plaintiff's bills 914, 1369, 3246, 5888, and 5892 in the sum of $15,143.91, on the ground that the Government was entitled to have had its military impedimenta, transported in connection with the movement of United States troops, moved free, at the rate of one baggage car free for every 25 men in the movement. Pending settlement of the account by the auditor, plaintiff's railroad was taken over by the Government on January 1, 1918, under the act of August 29, 1916 (39 Stat. 619, 645), and the President's message of December 26, 1917, and accordingly came under the control, management, and operation of the United States Railroad Administration, by which it was operated and controlled March 1, 1920 (41 Stat. 457). The auditor deducted for alleged overpayments on corporate bills from bills of the Railroad Administration during the period of Federal control the sum of $13,035.97, and after the period of Federal control had ceased the auditor deducted for such alleged overpayments on corporate bills from Railroad Administration bills the sum of $2,107.94.

VII

The amount so deducted by the auditor from Federal bills, $15,143.91, was carried in the account corporate transactions in accordance with the provisions of General Order No. 17 on the books of the Railroad Administration, and was charged by the plaintiff on its books against the War Department. After the termination of Federal control, in accordance with General Order No. 66, the amount so deducted, $15,143.91, was charged in the account corporate transactions against the plaintiff by the Railroad Administration and was credited by the plaintiff to the Railroad Administration and charged against the War Department on its books in a suspense account to await action by the auditor or the Court of Claims.

General Orders No. 17 and No. 66, attached to these findings as Appendixes A and B, respectively, are made part of this finding by reference thereto.

VIII

On August 25, 1920, a complete settlement was made between the War Department and the Director General of Railroads of all un-

settled accounts for transportation furnished by the Railroad Administration to the War Department between January 1, 1918, and March 1, 1920, the period of Federal control of railroads, and the amount paid by the War Department to the Railroad Administration in such settlement was $38,169,294.39.

On August 26, 1920, the Comptroller of the Railroad Administration issued, with the approval of the Director General of Railroads, Accounting Circular 152, which reads:

18 "To each carrier, the properties of which were under Federal control at the termination thereof at midnight, February 29, 1920:

"A settlement has been made between the War Department and the director general for all unpaid charges for passenger and freight transportation service, including Pullman fares and demurrage charges, rendered by the director general.

"Accounting officers are directed to close into an account styled 'War Department transportation charges' all unpaid accounts against the War Department carried in the Federal books covering such transportation service and to discontinue rendering Federal bills against the War Department for services of this nature.

"The account 'War Department transportation charges' shall be closed into the administration ledger control account and reported as a special item on Form AC 512–A in the same manner as prescribed in Accounting Circular 82 for reporting other items transferred to the administration ledger control account. Record of the balance so transferred shall be kept in the Federal accounts in such detail that it may be readily audited by representatives of the Railroad Administration.

"Special attention is directed to the fact that the settlement above referred to involves the War Department only, that it does not include amounts due for the construction of tracks, service at cantonments, etc., and does not include bills rendered in the Federal accounts for transportation service performed prior to Federal control.

"Unpaid bills carried in the Federal accounts against the War Department for transportation service performed prior to Federal control shall not be closed into the account 'War Department transportation charges,' but instead shall be charged to the corporation through the account '(Name of corporation)—Corporate Transactions.' Such charges against the corporation when reported on Settlement Statement Form AC 510 shall be allocated to the quarter in which the corporation was originally credited with the amount or bill was stated in the accounts."

## IX

The account of the final settlement between the Director General of Railroads and the plaintiff of July 29, 1921, made up as of May 31, 1921, reads as follows:

19 [United States Railroad Administration, Director General of Railroads]

***Comparison of claim submitted by the New Orleans, Texas & Mexico Railway Co., including St. Louis, Brownsville & Mexico Railway Co., Beaumont, Sour Lake & Western Railway Co., Orange & Northwestern Railroad Co., with books of the central administration, adjusted to May 31, 1921***

| | Corporate claim as of May 31, 1921 | Administration books as of May 31, 1921 | Difference |
|---|---|---|---|
| **DUE TO CORPORATION** | | | |
| Compensation, $1,500,000, paid | $4,656,697.50 | $3,245,901.64 | $1,410,795.86 |
| Less advances, loans, etc | 1,868,850.00 | 1,868,850.00 | |
| | 2,787,847.50 | 1,377,051.64 | 1,410,795.86 |
| Rental interest on completed A and B | | 7,823.07 | 7,823.07 |
| Cash on hand Dec. 31, 1917 | 2,494,429.83 | 2,494,429.83 | |
| Agents' and conductors' balance 12/31/17 | 133,809.53 | 133,809.53 | |
| Assets Dec. 31, 1917, collected | 1,685,449.27 | 1,685,449.27 | |
| Revenue prior to Jan. 1, 1918 | 252,463.09 | 252,463.09 | |
| Total | 7,353,999.22 | 5,951,026.43 | 1,402,972.79 |
| **DUE FROM CORPORATION** | | | |
| Additions and betterments | 293,227.28 | 293,227.28 | |
| Liabilities Dec. 31, 1917, paid | 3,827,386.55 | 3,827,386.55 | |
| Corporate transactions | 1,024,167.93 | 1,024,167.93 | |
| Expenses prior to Jan. 1, 1918 | 320,466.75 | 320,466.75 | |
| Cash advanced on open account | 350,000.00 | 350,000.00 | |
| Total | 5,815,248.51 | 5,815,248.51 | |
| Balance due to corporation | 1,538,750.71 | 135,777.92 | 1,402,972.79 |
| **OTHER ITEMS DUE TO CORPORATION** | | | |
| Equipment retired | 139,573.58 | 53,617.29 | 86,956.29 |
| Road property retired and not replaced | 23,373.54 | 11,237.04 | 12,136.50 |
| Difference in price of fuel oil, 85,334.25 barrels at $1.8373 | 156,784.62 | 156,784.62 | |
| Frisco Refrigerator Line installments on purchase price of 986 refrigerator cars | 67,215.17 | 67,215.17 | |
| Total | 386,946.91 | 287,854.12 | 99,092.79 |
| **OTHER ITEMS DUE FROM CORPORATION** | | | |
| Material and supplies (excess) | 71,507.75 | 71,507.75 | |
| Total | 71,507.75 | 71,507.75 | |
| Balance due to corporation on other items | 315,439.16 | 216,346.37 | 99,092.79 |
| Balance due to corporation | 1,854,189.87 | 352,124.29 | 1,502,065.58 |
| **DEPRECIATION OBLIGATION** | | | |
| Equipment | 236,726.05 | 235,718.00 | 1,008.05 |
| Total due to corporation on depreciation | 236,726.05 | 235,718.00 | 1,008.05 |
| Balance due to corporation | 2,090,915.92 | 587,842.29 | 1,503,073.63 |
| **MAINTENANCE** | | | |
| Way and structures, under | 1,027,718.37 | 212,157.71 | 815,560.66 |
| Equipment structures, under | 1,395,455.55 | | 1,395,455.55 |
| Balance due to corporation on maintenance | 2,423,173.92 | 212,157.71 | 2,211,016.21 |
| Balance due to corporation | 4,514,089.84 | 800,000.00 | 3,714,089.84 |

OFFICE OF COMPTROLLER,
*July 22, 1921.*

I hereby certify that this is a correct copy.

L. J. TRACY,
*Comptroller, United State Railroad Administration.*

MAY 21, 1924.

There was no dispute as to the amount due from plaintiff to the Railroad Administration on the account corporate transac-

20 tions, $1,024,167.93, and the same was paid in full in the final settlement. Included in the amount paid by plaintiff to the Railroad Administration in the account corporate transactions was the sum of $15,143.91 deducted from Railroad Administration bills on account of alleged overpayment of corporate bills. The only items of account of the final settlement that were compromised in reaching the lump sum settlement were those that arose out of the depreciation and retirement of equipment and the maintenance of both roadway and equipment.

## X

When the final settlement was effected an agreement was entered into on July 29, 1921, between James C. Davis, Director General of Railroads and Agent of the President, acting on behalf of the United States, and the St. Louis, Brownsville and Mexico Railway Co. and other affiliated companies, through the president acting for each, the material parts of which read:

"The said companies hereby acknowledge payment of the sum of eight hundred thousand dollars ($800,000) by the said director general, the receipt whereof is hereby acknowledged, in full satisfaction and discharge of all claims, rights, and demands, of every kind and character, which the said companies, both jointly and severally, now have or hereafter may have or claim against the director general, or anyone representing or claiming to represent the director general, the United States, or the President, growing out of or connected with the possession, use, and operation of the companies' property by the United States during the period of Federal control; and the said companies hereby, both jointly and severally, acknowledge the return to the receipt by them of all their property and rights which they are entitled to, and further acknowledge that the director general has fully and completely complied with and satisfied all obligations, on his part, or on the part of the United States, or the United States Railroad Administration, growing out of Federal control.

"The purpose and affect of this instrument is to evidence a complete and final settlement of all demands, of every kind and character, as between the parties hereto growing out of the Federal control of railroads * * *."

The settlement agreement of July 29, 1921, is attached to these findings as Appendix C and is made part hereof by reference thereto.

*Conclusion of law*

Upon the foregoing finding of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover the sum of $15,143.91 mentioned in Findings VII and IX.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of fifteen thousand one hundred forty-three dollars and ninety-one cents ($15,143.91).

See Reading Company, No. 34747, 60 C. Cls. —; Southern Railway Co., No. B–118, 60 C. Cls. —; and New York, New Haven & Hartford R. R. Co., No. B–44, 60 C. Cls. —.

20½ In Court of Claims of the United States

No. A–236

THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.

*v.*

THE UNITED STATES

*Appendices A, B, and C*

21 APPENDIX A

United States Railroad Administration, Director General of Railroads

GENERAL ORDER NO. 17

WASHINGTON, D. C., *April 3, 1918.*

*To chief executive officers of carriers subject to Federal control:*

It is hereby ordered that the following rules and regulations shall be observed and shall govern the recording of and accounting for all transactions which arise during Federal control:

(1) For accounting purposes Federal control began as of January 1, 1918. Immediate steps shall be taken by each carrier subject thereto, to open new and separate books of accounts, such as cash books, general and subsidiary ledgers and journals, and all supporting and subsidiary books and records incident thereto, upon which shall be recorded transactions which arise under and are incident to Federal control on and after January 1, 1918. Such books shall be designated and are hereinafter referred to as "Federal books."

(2) The totals of the accounts "Cash," "Demand loans and deposits," and "Time drafts and deposits" appearing on the corporation's books as of December 31, 1917, shall be transferred to the Federal books, debited to accounts of the same titles, and credited to a deferred liability account styled "(Name of corporation)—Cash—December 31, 1917." On the corporate books the amount of such balances should be transferred to a deferred asset account styled "U. S. Government—Cash—December 31, 1917." All cash transactions subsequent to December 31, 1917, relating to operations prior or subsequent thereto, shall be recorded in the Federal cash book opened as of January 1, 1918.

(3) The total of account "Net balance receivable from agents and conductors" appearing on the corporation's books as of December

31, 1917, shall be transferred to the Federal books, debited to an account of the same title, and credited to a deferred liability account styled "(Name of corporation)—Agents' and conductors' balances—December 31, 1917." On the corporate books the amount of such balances should be transferred to a deferred asset account styled "U. S. Government—Agents' and conductors' balances—December 31, 1917."

(4) The total of account "Materials and supplies" appearing on the corporation's books as of December 31, 1917, shall be transferred to the Federal books, debited to an account of the same title, and credited to a deferred liability account styled "(Name of corporation)—Materials and supplies—December 31, 1917." On the corporate books the amount of such balance should be transferred to a deferred asset account styled "U. S. Government—Material and supplies—December 31, 1917."

(5) In addition to the assets above specified, there shall be likewise transferred to the Federal books and similarly recorded thereon, such other working assets of the corporation as may be mutually agreed upon.

(6) There shall be currently entered, upon such Federal books, in the manner and under the rules and regulations prescribed by the Interstate Commerce Commission or which may hereafter be prescribed, all transactions involving revenues, expenses, taxes and rentals, and other items corresponding to those which constitute the basis upon which the standard return to the carrier shall be determined. Such entries shall include corresponding assets and liabilities and the cash settlement thereof; also all transactions involving materials and supplies subsequent to December 31, 1917.

22 . (7) Transactions of the corporation, including those arising out of cash receipts or disbursements, which do not affect or which do not enter into and form a part of those used in determining the basis of standard return, such as interest and dividends received or paid, miscellaneous rents, and other similar corporate transactions, including additions and betterments, shall not be recorded on or passed through such Federal books unless such transactions be negotiated and conducted for account of the corporation by or under the direction of the director general. Where such income transactions are negotiated and conducted by or under the direction of the director general the transactions shall be recorded on the Federal books but credited or charged to an account to be opened, styled "(Name of corporation)—Corporate income transactions." Concurrently, corresponding entries should be made on the corporate books charging or crediting the accounts prescribed by the Interstate Commerce Commission or which may hereafter be prescribed, the offset being in an account styled "U. S. Government—Corporate income transactions." Where additions and betterments are made by or under the direction of the director general, the expenditures shall

be charged on the Federal books to a deferred asset account " (Name of corporation)—Additions and betterments." Concurrently, entries should be made on the corporate books, charging the appropriate accounts and crediting a deferred liability account "U. S. Government—Additions and betterments."

(8) Current or operating assets, other than those prescribed in paragraphs (2), (3), (4) and (5) hereof, such as, balances due from individuals and companies, and liabilities, such as, vouchers, payrolls, etc., which were due to or by the corporation as of December 31, 1917, shall not be transferred in detail to the Federal books; but as and when such assets are collected or the liabilities are paid, they shall be credited or debited as the case may be, on the Federal books to a deferred liability account styled " (Name of corporation)—Assets, December 31, 1917, collected," or to a deferred asset account " (Name of corporation)—Liabilities, December 31, 1917, paid." There should be concurrently made, on the corporate books corresponding entries debiting and crediting the U. S. Government with assets collected and liabilities paid.

(9) Transactions relating to operations, as defined in paragraph (6) hereof, if not previously accrued, shall be included in and shall form a part of the operating results of each carrier regardless of the date thereof. Items clearly applicable to the period prior to January 1, 1918, commonly called "lap-overs," shall be ascertained currently, set up on the Federal books, and included in the appropriate accounts as heretofore. At the end of each month, the total of "lap-over" credit items shall be charged to an unadjusted debit account styled "Revenue prior to January 1, 1918," and credited to a deferred liability account styled " (Name of corporation)—Revenue prior to January 1, 1918." The total of "lap-over" debit items shall be credited to an unadjusted credit account styled "Expense prior to January 1, 1918," and charged to a deferred asset account styled "(Name of corporation)—Expense prior to January 1, 1918." Operating revenues which have been accrued currently in accordance with the established practice of the carrier, shall be considered as current revenues and not as "lap-over" items.

(10) The accounts between the U. S. Government and the corporation, for which provision is made herein, shall be adjusted in such manner as may be hereafter agreed upon.

(11) Inquiries as to the interpretation and application of the provisions of this order and the procedure to be observed under its requirements shall be addressed to the Director of Public Service and Accounting.

W. G. McAdoo,
*Director General of Railroads.*

23

## APPENDIX B

UNITED STATES RAILROAD ADMINISTRATION,
*Washington, February 24, 1920.*

GENERAL ORDER NO. 66

To provide accounting procedure incident to the termination of Federal control and to reestablish as of the end of Federal control the instructions relative to allocation of revenues and expenses as between the United States Railroad Administration and the corporations, applied as of the beginning of Federal control, it is ordered that the following regulations be observed in accounting for transactions relating to the Federal control of transportation systems:

### 1. Books and accounts

The separate books of account, such as the Federal Treasurer's cash book, the general and the necessary subsidiary ledgers and journals, and all supporting books and records relating thereto, upon which are recorded transactions incident to Federal control and which have been designated as "Federal books," shall be continued in use after February 29, 1920, for the purpose of recording therein Federal control transactions after the period of Federal operation ceases and until further orders. Transactions arising out of operations subsequent to February 29, 1920, shall not be entered on the Federal books, but should be entered on the corporate books; likewise all transactions not previously accounted for either on the Federal or corporate books relating to the period prior to Federal contral should be entered on the corporate books and shall be omitted from the Federal books.

### 2. Cash

(a) The Federal Treasurer's cash book, in which is recorded the balance of cash on hand February 29, 1920, shall be continued in use after that date until further ordered, and all Federal control cash transactions arising after the end of Federal control shall be entered in such cash book in accordance with instructions here following.

(b) The total of the amount of cash, if any, transferred to the corporation from the cash in the hands of the Federal Treasurer in accordance with General Order No. 68 shall be charged on the Federal books to a deferred asset account styled "(Name of corporation)—Federal cash, February 29, 1920." The amount of such cash transferred should be entered in the corporate cash book, and
24 on the corporate general books should be debited to the appropriate account or accounts and credited to a deferred liability account styled "U. S. Government—Federal cash, February 29, 1920."

(c) The balance in the account appearing on the Federal books representing cash in transit applicable to accounts for the period prior to March 1, 1920, shall be charged on such books to a current asset account styled "(Name of corporation)—Federal cash in transit, February 29, 1920." On the corporate books corresponding entry should be made, debiting the appropriate account or accounts and crediting a current liability account styled "U. S. Government—Federal cash in transit, February 29, 1920." When such cash is received by the corporation it shall be paid over daily into the Federal cash account and entered on the Federal books as a credit to the account styled "(Name of corporation)—Federal cash in transit, February 29, 1920." On the corporate books corresponding entry should be made debiting the account "U. S. Government—Federal cash in transit, February 29, 1920."

(d) When cash is realized from assets of the Director General the amount thereof shall be credited through the Federal cash book to the proper accounts. This refers to assets recorded as of February 29, 1920, and those subsequently recorded on the Federal books. This cash shall not be entered on the corporate books in any manner, except as provided in 2 (c), 2 (f) and section 7.

(e) All authorized payments of liabilities of the Director General made out of Federal cash shall be charged on the Federal cash book to the proper accounts. Such payment should not be entered on the corporate books in any manner, except as provided in section 7.

(f) On and after March 1, 1920, all remittances (except those deposited in the Federal cash and accounted for as applicable to the agents' and conductors' accounts for February, 1920) received from agents and conductors shall, in the first instance be entered in the corporate cash book and credited to the appropriate accounts on the corporate general books. To the extent that items standing in the account "Agents' and conductors' balances" as of February 29, 1920, are included in such remittances, the amount shall be reported to the accounting department and the aggregate paid over daily into the Federal cash. Such payments should be charged on the corporate books to the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920." On the Federal books the payments shall be charged to "Cash" and credited to the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." This method of daily settlements shall apply to agents and conductors' unremitted cash on hand at midnight February 29, 1920, and to all collections made by agents and conductors during the month of March, 1920, applicable to balances of February 29, 1920. The balance in the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920," after such collections have been credited thereto shall be treated as an open account, includible on quarterly settlement Form AC–510.

3. Agents' and Conductors' Balances

(a) The total of the accounts representing amounts carried as due from agents and conductors appearing on the Federal books as of February 29, 1920, shall be transferred to the corporate books and debited on the Federal books to an account styled "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." On the corporate books the amount of such balances should be debited to the appropriate account or accounts and credited to a deferred liability account styled "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920."

(b) Any portion of the balance in the account representing agents' and conductors' balances at December 31, 1917, credited on the Federal books to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917," which was subsequently transferred from the agents' and conductors' accounts to accounts receivable, or other asset or liability accounts, other than those prefixed with the name of the corporation, or is in the balances carried to the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920," and is uncollected as of February 29, 1920, shall also be transferred on the Federal books to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917." On the corporate books the amount should be debited to the appropriate accounts and credited to the account "U. S. Government—Agents' and conductors' balances, December 31, 1917."

(c) If amounts representing advances and prepaid charges on waybills outstanding December 31, 1917, were transferred to the Federal books, the balances in the advances and prepaid accounts shall be transferred to the corporate books, and on the Federal books included in the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." On the corporate books the amount should be carried to the proper account or accounts, and should be included in the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920."

If amounts of advances and prepaid charges on waybills dated prior to January 1, 1918, transferred from the corporate to the Federal books and included in the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917," are outstanding as of February 29, 1920, the amounts thereof shall on the Federal books be transferred from the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920," to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917." On the corporate
26 books such amounts should be transferred from the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920," to the account "U. S. Government—Agents' and conductors' balances, December 31, 1917." The amounts to be transferred to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917," provided in paragraphs

(b) and (c) of this section, shall be reported on Form AC–510 as for the first quarter of 1918.

(d) In the event that amounts included in the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920," set up on the corporate books as provided in paragraph 3 (a) hereof are later found to be chargeable to such accounts as "Material and supplies," "Additions and betterments," "Individuals and companies," or other accounts on or properly includible on the Federal books, entry should be made on the corporate books charging the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920," crediting the amount thereof to agents' and conductors' accounts. On the Federal books an entry covering such items shall be made charging the appropriate account or accounts and crediting the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." Amounts relating to material and supplies shall be, on the Federal books, charged to the account "(Name of corporation)—Federal material and supplies, February 29, 1920," instead of to "Material and supplies." An additional entry on the corporate books should be made in respect to the amounts chargeable to "Material and supplies" account, debiting "Material and supplies" account and crediting "U. S. Government—Federal material and supplies, February 29, 1920."

4. Material and supplies

(a) The total of the account "Material and supplies" appearing on the Federal books as of February 29, 1920, shall be transferred to the corporate books and debited to a deferred asset account on the Federal books styled "(Name of corporation)—Federal material and supplies, February 29, 1920." On the corporate books the amount of such balance should be charged to the appropriate account and credited to a deferred liability account styled "U. S. Government—Federal material and supplies, February 29, 1920."

(b) All material and supplies received prior to March 1, 1920, shall be accounted for in the Federal books. All invoices for such material and supplies referred to in the previous sentence as are vouchered after the close of the accounts for the month of February, 1920, shall be covered by Federal form vouchers and the cost of all such material and supplies shall be added to the account "(Name of corporation)—Federal material and supplies, February 29, 1920." On the corporate books the amount of such vouchers should be charged to appropriate account for material and supplies and credited to the account "U. S. Government—Federal material and supplies, February 29, 1920."

27 (c) Amounts paid prior to March 1, 1920, for material and supplies not received at midnight February 29, 1920, shall not be included on the Federal books in the account representing stock of material and supplies or in the account "(Name of corpora-

tion)—Federal material and supplies, February 29, 1920." Neither shall material represented thereby be included in the inventory taken in accordance with the provisions of General Order No. 62. Such amounts shall instead be charged on the Federal books to an appropriate deferred asset account.

When the material and supplies therefor are received, or used by the corporation, the amounts shall, on the Federal books, be charged to the corporation through a deferred asset account styled "(Name of corporation)—Federal assets collected," and should, on the corporate books, be charged to the appropriate account and credited to a deferred liability account styled "U. S. Government—Federal assets collected."

(d) Material and supplies ordered prior to March 1, 1920, received and paid for by the corporation subsequent to February 29, 1920, shall not be entered in the Federal accounts in any manner.

5. Other accounts transferred

(a) In addition to the asset accounts above specified, there shall be likewise transferred to the corporate books other asset accounts of the Federal administration, similar to those sundry asset accounts which were taken over on the Federal books in the separation of accounts at the beginning of Federal control or subsequent thereto. The items here referred to are such as: Insurance premiums paid in advance, taxes paid in advance. Additional items of miscellaneous assets (for example, material loaned or leased), or liabilities, should be similarly transferred as may be mutually agreed upon.

Subsequent to February 29, 1920, cash vouchers should not be made for reimbursement of working funds expended during February, 1920, and previous months, but if such expenditures are approved the amounts thereof shall, on the Federal books, be charged to the appropriate accounts and credited to the working-fund account. It is suggested that the corporation take over the balance of cash in working funds by paying the aggregate amount thereof into the Federal cash.

Hospital and other funds for which the railroad is custodian shall be disposed of in accordance with General Order No. 68.

If during the period of Federal operations amounts representing overcharge freight claims paid out of Federal funds, affecting traffic, the revenues from which were included in corporation revenue or credited to it as lap-over revenue on the Federal books, or amounts representing loss and damage claims paid out of Federal funds chargeable to the period prior to Federal control, were carried on the Federal books in suspense accounts pending adjustment thereof with other carrier corporations, or pending receipt of additional information wherewith to dispose of the amounts carried, and such amounts are carried in suspense account as of February 29, 1920, they shall be charged to the corporation. Such amounts shall on the Federal books be charged to the account

"(Name of corporation)—Corporate transactions" and on the corporate books should be charged to an appropriate suspense account and credited to the account "U. S. Government—Corporate transactions."

(b) The value of mileage scrip introduced during Federal control, sold on or prior to February 29, 1920, and honored subsequently, shall be credited on the Federal books to the account "(Name of corporation)—Federal mileage scrip" and entry should be made on the corporate books charging "U. S. Government—Federal mileage scrip." Such scrip collection should not be destroyed until the account has been audited by Administration accountants, or unless permission is obtained from the Comptroller of the Railroad Administration. If in the establishment of accounts at the beginning of Federal control the mileage liability on the corporate books was made subject to an equitable adjustment when it appeared that no further mileage would be presented, a similar arrangement will be made as to the balance on the Federal books as of February 29, 1920.

6. Allocation of revenues and expenses

(a) Railway operating revenues and taxes shall be allocated to the period of Federal and corporate operations in accordance with the provisions of the standard agreement.

(b) Railway operating expenses, reparation and other claims, hire of equipment and joint facility rents, and any other accounts (except as provided in par. (a)), which constitute the basis of the standard return, shall be allocated with reference to the time when incurred as between the period of Federal control and the period prior and subsequent thereto.

7. Recording Federal control transactions and lap-over revenues and expenses

(a) There shall be entered currently after February 29, 1920, upon the Federal books referred to in section 1 hereof, record of all transactions arising out of Federal control.

(b) Bills for accounts collectible and vouchers for accounts payable covering all transactions arising out of Federal operations shall be prepared, respectively, on United States Railroad Administration bill and voucher forms, recorded in the appropriate Federal bill and voucher registers, and charged or credited on the Federal books to the appropriate accounts.

29 (c) It is desired that transactions arising out of Federal control should not be entered in the corporate books in any manner; likewise it is desired that corporate transactions should not be included in the Federal accounts. However, it may be necessary in exceptional cases, as in the case of interline freight and passenger transactions, to include Federal transactions in the corporate accounts or corporate transactions in the Federal accounts. In such cases the amounts due to or from the Federal management should

be credited on the corporate books to a deferred liability account styled "U. S. Government—Federal assets collected" or debited to a deferred asset account styled "U. S. Government—Federal liabilities paid," as may be appropriate. In the Federal books such amounts shall be included, as may be appropriate, in a deferred liability account styled "(Name of corporation)—Federal liabilities paid" or in a deferred asset account styled "(Name of corporation)—Federal assets collected."

The net amount of cash realized or paid in settlement of lap-over revenues and expenses of the Federal period should be ascertained and appropriate cash settlement made monthly. The amounts thereof shall be entered on the Federal cash books and shall be debited or credited as may be appropriate to the accounts "(Name of corporation)—Federal assets collected" or "(Name of corporation)—Federal liabilities paid." Corresponding contra-entries should be made on the corporate books.

(d) If Federal revenue and expense items are reported and included in the revenue or expense accounts stated on the corporate books, as in the case of interline freight accounts, such amounts shall be accumulated in monthly totals from the corporate book records and accounted for as follows:

The total credit to the Federal income accounts should be charged on the corporate books to the appropriate primary revenue accounts and credited to the Federal management through the account "U. S. Government—Federal assets collected."

On the Federal books the same amounts shall be charged to the corporation through the account "(Name of corporation)—Federal assets collected" and credited to the appropriate primary revenue account.

The total debit to the Federal income accounts should be credited on the corporate books to the appropriate expense or other accounts and charged to the Federal management through the account "U. S. Government—Federal liabilities paid."

On the Federal books the same amounts shall be credited to the corporation through the account "(Name of corporation)—Federal liabilities paid" and charged to the primary operating expenses or other accounts.

(e) In order to preserve the continuity of the income accounts and statistics of carriers, that such income accounts and statistics
30 may be complete, and that there shall not be omitted therefrom amounts which would have been included in the appropriate accounts had there been no Federal control of railroads, at the end of each audit month, the total of the amounts, appearing on the Federal books, charged and credited to the accounts forming the basis upon which the standard return was determined, should be charged and credited on the corporate books to the appropriate primary revenue, expense or income accounts and debited or credited to subaccounts of Income Accounts Nos. 519 and 551, as the case may

be, styled "Revenues Federal" or "Expenses Federal," as may be appropriate. No corresponding adjusting entry shall be made on the Federal books of the individual carriers. Such an entry will be made in Washington based on the aggregate totals of the monthly reports made in response to the provisions of Accounting Circular No. 82.

8. Monthly and quarterly reports

Monthly and quarterly reports in accordance with provisions of Accounting Circulars Nos. 55 and 82, shall be rendered until the accounts on the Federal books are completely liquidated or adjusted, or until otherwise ordered.

The balances on the Federal books in all accounts prefixed with the name of the corporation authorized by this order shall be closed monthly to "Administration ledger control account" in accordance with Accounting Circular No. 82 and, except as to the account "(Name of corporation)—Federal material and supplies, February 29, 1920," shall be reported on Form AC–510 in accordance with Accounting Circular No. 55.

9. General

Where the property was taken over for Federal operation at a date subsequent to December 31, 1917, the date as of which such property was taken over should be substituted for December 31, 1917, wherever mentioned in this order.

The foregoing instructions shall not apply as to those lines of railroads in the United States under Federal operation at midnight February 29, 1920, that are operated thereafter as parts of a common carrier system or systems in countries adjacent to the United States, and whose treasurer and accounting officer and general accounts are located in those countries. In such cases special instructions will be given by the Comptroller.

Inquiries as to the interpretation and application of the provisions of this order and the procedure to be observed under the requirements shall be addressed to Mr. Geo. H. Parker, Comptroller.

WALKER D. HINES,
*Director General of Railroads.*

31 UNITED STATES RAILROAD ADMINISTRATION,
*Washington, June 11, 1920.*

GENERAL ORDER NO. 66–A

Paragraph (e) of section 7 of General Order No. 66 is hereby cancelled.

JOHN BARTON PAYNE,
*Director General of Railroads.*

32 APPENDIX C

FINAL SETTLEMENT

This agreement, entered into this 29th day of July, A. D. 1921, by and between James C. Davis, Director General of Railroads and Agent of the President, acting on behalf of the United States and the President, hereinafter called the "director general," and the New Orleans, Texas and Mexico Railway Company, the St. Louis, Brownsville and Mexico Railway Company, the Beaumont, Sour Lake and Western Railway Company, the Orange and Northwestern Railroad Company, New Iberia & Northern Railroad Company, and Iberia, St. Mary & Eastern Railway Company, hereinafter called the "companies," witnesseth:

The said companies hereby acknowledge payment of the sum of eight hundred thousand dollars ($800,000.00) by the said director general, the receipt whereof is hereby acknowledged, in full satisfaction and discharge of all claims, rights, and demands of every kind and character, which the said companies, both jointly and severally, now have or hereafter may have or claim against the director general, or any one representing or claiming to represent the director general, the United States, or the President, growing out of or connected with the possession, use, and operation of the companies' property by the United States during the period of Federal control; and the said companies hereby, both jointly and severally, acknowledge the return to and receipt by them of all their property and rights which they are entitled to, and further acknowledge that the director general has fully and completely complied with and satisfied all obligation on his part, or on the part of the United States, or the United States Railroad Administration, growing out of Federal control.

The purpose and effect of this instrument is to evidence a complete and final settlement of all demands, of every kind and character, as between the parties hereto growing out of the Federal control of railroads, save and except that the following matters are not included in this adjustment and are not affected thereby:

Exceptions

1. The obligation on the part of the companies, as expressed in the standard form of contract between the director general and the railroads, as to the conduct of litigation arising out of Federal control (except as to claims and suits of carriers against the director general or the United States), as same is stated in paragraph (f) of section 9 of said contract, or as heretofore agreed to by the companies, is to continue, and is not affected by this settlement.

2. This settlement does not include or affect any moneys or assets of the director general turned over to the companies pursuant to General Order No. 68, the account created by this order to be adjusted as though this agreement had not been made.

33 3. This settlement does not include the obligations of the director general assumed in paragraphs (i) and (j) of section 4 of said standard contract, to save the companies harmless as to claims, if any, of third persons, or the obligations of the director general in respect to the payment of taxes under section 6 of the contract.

In witness whereof, the parties to this agreeemnt have duly signed, sealed, and executed same in triplicate, such agreement being duly executed by the president of each of said companies and attested by the secretary, with the corporate seal hereto annexed, and the said president of each of said companies hereby certifies that he has been duly authorized to execute and deliver this agreement on the part of each of said companies by a vote of the respective boards of directors of said companies.

(S) JAMES C. DAVIS, [SEAL.]
*Director General of Railroads and Agent of the President.*

NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY,
(S) By J. S. PYEATT, [SEAL.]
*President.*

Attest:
(S) A. T. COLE,
*Assistant Secretary.*

THE ST. LOUIS, BROWNVILLE AND MEXICO RAILWAY COMPANY,
(S) By J. S. PYEATT, *President.* [SEAL.]

Attest:
(S) A. T. COLE,
*Secretary.*

34 VI. *Judgment*

At a Court of Claims held in the city of Washington on the 5th day of January, A. D. 1925, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the plaintiff, and do order and adjudge that the plaintiff, as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of fifteen thousand one hundred and forty-three dollars and ninety-one ($15,143.91).

BY THE COURT.

VII. *Petition for appeal*

Filed April 3, 1925

From the judgment rendered in the above-entitled cause on the 5th day of January, 1925, in favor of claimant, the defendants, by

their Attorney General, on the 3rd day of April, 1925, make application for, and give notice of, an appeal to the Supreme Court of the United States.

HERMAN J. GALLOWAY,
*Assistant Attorney General.*

VIII. *Order allowing appeal*

It is ordered by the court this 18th day of April, 1925, that the defendant's application for appeal be and the same is allowed.

35 In Court of Claims of the United States

[Title omitted.]

I, F. C. Kleinschmidt, assistant clerk, Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the history of proceedings, of the submission of case, of the findings of fact and conclusion of law entered by the court, of the judgment of the court, of the defendant's application for appeal, and of the order of the court allowing said application.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this 18th day of April, A. D. 1925.

[SEAL.]

F. C. KLEINSCHMIDT,
*Assistant Clerk, Court of Claims.*

[Indorsement on cover:] File No. 31104. Court of Claims. Term No. 404. The United States, appellant, vs. the St. Louis, Brownsville & Mexico Railway Company. Filed April 30th, 1925. File No. 31104.

○

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1925

## No. 499

THE UNITED STATES, APPELLANT

vs.

BALTIMORE & OHIO RAILROAD COMPANY

APPEAL FROM THE COURT OF CLAIMS

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1 The Court of Claims of the United States

BALTIMORE & OHIO RAILROAD COMPANY
vs.
THE UNITED STATES. } No. B–73.

I. *History of proceedings*

On April 21, 1922, the plaintiff filed its original petition.
On June 21, 1922, a general traverse was entered under rule 34.
On April 9, 1923, by leave of court, the plaintiff filed its amended petition.

II. *Argument and submission*

On December 3, 1924, this case was argued and submitted on merits by Messrs. John F. McCarron and George E. Hamilton, for the plaintiff, and by Messrs. A. A. McLaughlin and L. R. Mehlinger, for the defendant.

2 III. *Order of court entered January 5, 1925*

It is ordered by the court, this 5th day of January, 1925, that this case be, and it is, remanded, to enable the plaintiff, if it so desires, to file an amended petition.

MEMORANDUM

It appears in the amended petition filed April 9, 1923, that the transportation bills, copies of which are attached to the petition, were for services rendered in 1918 and 1919, during which time the court knows the services were rendered by the Railroad Administration under the control of the Director General of Railroads. These revenues by statute belong to the United States. If the plaintiff's case justifies an action because of deductions from corporate bills for services rendered prior to the Railroad Administration the petition should state the facts. The facts relied upon must sustain the allegations of the petition.

3 IV. *Amended petition*

(Filed January 13, 1925)

*To the Honorable the Chief Justice and Judges of the Court of Claims:*

Your petitioner respectfully shows unto your honors the following facts:

1. Petitioner is a corporation organized under the laws of the State of Maryland and operates and at the times hereinafter stated did operate a system of railroads in interstate commerce in the United States.

2. During the years 1916 and 1917 the plaintiff, at the re-
4 quest of the proper officers of the United States Army, fur-

nished transportation to the United States in connection with movements of United States troops to the Mexican border in 1916 and 1917 as set forth in transportation bills referred to in Auditor for the War Department's settlement certificates. Said Auditor for the War Department's settlement certificates are hereafter referred to by date and number. The troops were transported by plaintiff at the rates due under the interterritorial military agreement of July 1, 1916, and the interterritorial military arrangement effective January 1, 1917, that had been entered into between plaintiff and the United States. Plaintiff was paid the correct amount due it under said interterritorial military agreements by the Quartermaster's Department of the United States Army for the transportation of the said troops to the Mexican border in 1916 and 1917.

3. Subsequent to the payment by the Quartermaster's Department to plaintiff of the correct amount due it for the transportation of the troops as set forth in paragraph 2, the Auditor for the War Department, under his settlement certificates at various dates and by numbers hereinafter set forth in summary, held that overpayments had been made by the United States to plaintiff in transportation bills which are set forth in said Auditor for the War Department's settlement certificates covering movements of the said United States troops to the Mexican border in 1916 and 1917 by plaintiff, on account of a cheaper fare constructed by said Auditor for the War Department in using combination of certain fares via Shreveport, Louisiana, and said deductions made by said Auditor for the War Department are contained in his numbered settlement certificates in the following summary:

5

| Item No. | Date | Auditor's certificate | Deducted by auditor | Add supplemental bills disallowed by auditor | Certificate of disallowance | Deduct item not applying on this claim | Total |
|---|---|---|---|---|---|---|---|
| 1 | July 9, 1918 | 32920 | $8,486.75 | | | | $8,486.75 |
| 2 | July 5, 1918 | 32876 | 789.95 | | | | 789.95 |
| 3 | July 5, 1918 | 32878 | 128.57 | | | | 128.57 |
| 4 | Sept. 6, 1918 | 33577 | 4,445.67 | | | | 4,445.67 |
| 5 | Sept. 13, 1918 | 33823 | 25.00 | | | | 25.00 |
| 6 | Sept. 30, 1918 | 34464 | 667.44 | | | | 667.44 |
| 7 | Sept. 30, 1918 | 34462 | 78.12 | | | | 78.12 |
| 8 | Sept. 30, 1918 | 34460 | 1,783.75 | | | | 1,783.75 |
| 9 | Oct. 10, 1918 | 34686 | 40.80 | | | | 40.80 |
| 10 | Sept. 30, 1918 | 34466 | 16.33 | | | | 16.33 |
| 11 | Oct. 24, 1918 | 34974 | 223.32 | | | | 223.32 |
| 12 | Dec. 20, 1918 | 36004 | 340.86 | $391.69 | 33131 | | 732.55 |
| 13 | Jan. 4, 1919 | 36296 | 951.29 | | | $7.93 | 943.36 |
| 14 | Feb. 14, 1919 | 37557 | 157.56 | | | | 157.56 |
| 15 | June 26, 1919 | 41834 | 152.60 | | | 7.88 | 144.72 |
| 16 | Feb. 19, 1919 | 37707 | 54.78 | | | | 54.78 |
| 17 | Mar. 29, 1919 | 39025 | 60.80 | | | | 60.80 |
| 18 | Mar. 26, 1919 | 38871 | 474.02 | | | 42.16 | 431.86 |
| 19 | Mar. 19, 1919 | 38511 | 331.76 | | | | 331.76 |
| 20 | Mar. 19, 1919 | 38509 | 345.71 | | | 14.35 | 331.36 |
| 21 | Mar. 20, 1919 | 38532 | 207.48 | 185.64 | 34589 | | 393.12 |
| 22 | June 27, 1919 | 41805 | 490.96 | | | | 490.96 |
| 23 | July 26, 1919 | 42983 | 38.93 | | | 13.58 | 25.35 |
| 24 | Aug. 2, 1919 | 43235 | 686.00 | 1,839.82 | 39878 | | 2,525.82 |
| | | | 20,978.45 | 2,417.15 | | 85.90 | 23,309.70 |

6 In the aforesaid summary, petitioner has included a total of $2,417.15, set forth in supplemental bills 33076, 34295, and 34078, which it contends are due it and which it rendered to the War Department for November, 1916, and the year 1917, but which were disallowed by the Auditor for the War Department in his settlement certificates, as set forth in above summary. The amount of $85.90 set forth in summary represents differences on five items and is not involved in this claim.

The total amount deducted and disallowed by the Auditor for the War Department is shown by the aforesaid summary to be $23,309.70, which is part of the amount of petitioner's claim.

4. The Auditor for the War Department deducted the sum of $20,892.55, as set forth in his numbered settlement certificates in paragraph 3, from original transportation bills of the Baltimore and Ohio United States Railroad Administration rendered by it to the War Department for the years 1918 and 1919 and numbered 51160, 51161, 51163, 51166, 51167, 51222, 51223, 51228, 51256, 51257, 51258, 51184, 51203, 51734, 51792, 52180, 52191, 52224, 52271, 52304, 53078, 53895, 88/5273, 89/5396, 88/5370, 810/5003, 810/5164, 811/5002, 811/5004, 811/5005, 811/5026, 91/5042, 94/5007, 94/5133, and the said amount of $20,892.55 was charged back to the Baltimore and Ohio Railroad Company corporate account by the Director General of Railroads by means of a Federal journal entry made in pursuance of General Order No. 66 and Accounting Circular 152 of the United States Railroad Administration, and the said amount of $20,892.55 charged to plaintiff was paid by plaintiff to the Director General of Railroads.

7 5. Under date of May 13, 1919, the Baltimore and Ohio United States Railroad Administration appealed to the Comptroller of the Treasury from the decision of the Auditor for the War Department's settlement certificate No. 34462, heretofore set forth in summary of paragraph two of this petition, and in said appeal stated in part as follows:

"The Auditor for the War Department claims a net fare of $27.95 figured as follows: Chattanooga, San Antonio, fare divides mileage prorate over Shreveport first out 50 cents—Vicksburg ferry on 607 vs. 405 miles, subdividing east over Meridian and Vicksburg out 50 cents, ferry at Vicksburg on 296 vs. 140 vs. 171 miles.

"The method used by the Auditor for the War Department is not in accordance with military arrangements, and therefore it appears that charges as originally rendered are correct, and you are respectfully requested to instruct the auditor to have settlement made on basis of $30.12 per capita, or a total of $1,084.32."

In his decision on the aforesaid appeal, Comptroller of Treasury Appeal No. 29414, dated June 27, 1919, the Comptroller of the Treasury held in part as follows:

"This case is similar to one which was considered by this office in decision of May 10, 1918 (24 Comp. Dec. 663), in which it was held that—

"'under an agreement between the Government and railway companies for passenger transportation which limited combinations of party rates to certain gateways from which party rates were available at the time the agreement was entered into, the most im-
8 portant of which were canceled by the railway companies prior to the date the said agreement was to become effective, the combination of rates on other commercial centers or gateways may properly be used as a reasonable construction of the agreement.'

"The auditor having made settlement in accordance with the principles set forth in this decision by combination of fares over commercial gateways, his action is correct and is affirmed."

6. Your petitioner states that the aforesaid decision of the Comptroller of the Treasury is erroneous and unjust, and that the other decisions of the Auditor for the War Department in his settlement certificates heretofore enumerated in paragraph two of this petition are also erroneous and unjust, as all of said decisions are based upon said Appeal Decision No. 29414 of the Comptroller of the Treasury in determining the rate to be applied in said Auditor for War Department's settlement certificates for the transportation of the soldiers in question.

7. The total amount of $23,309.70, deducted and disallowed by the Auditor for the War Department in his settlement certificates heretofore referred to by number in paragraph two of this petition, was presented by your petitioner in 25 supplemental bills numbered:

| Account number | Amount |
|---|---|
| 32288 A | $3,465.25 |
| 32289 A | 5,021.50 |
| 32084 A | 789.95 |
| 34076 A | 128.57 |
| 32080 A | 4,445.67 |
| 33657 A | 25.00 |
| 33868 A | 667.44 |
| 9 32282 A | 78.12 |
| 34080 A | 1,783.75 |
| 33074 A | 40.80 |
| 32494 A | 16.33 |
| 32293 A | 223.32 |
| 33076 A | 732.55 |
| 50068 A | 951.29 |
| 34291 A | 157.56 |
| 33665 A | 152.60 |
| 50077 A | 54.78 |
| 36189 A | 60.80 |
| 50066 A | 474.02 |
| 50067 A | 331.76 |
| 36216 A | 345.71 |
| 34295 A | 393.12 |
| 50078 A | 490.96 |
| 36223 A | 25.35 |
| 34078 B | 2,769.82 |

and aggregating $23,626.02 in an appeal to the Comptroller General of the United States under date of September 15, 1921, and requesting payment of the said amount on the ground that the Auditor for the War Department cannot reduce the rate of fares properly charged by carriers under interterritorial military agreements, as was done by the Auditor for the War Department in said settlement certificates, and your petitioner, in support of its contention, cited legal authority prohibiting said deduction and disallowances. On September 27, 1921, the Comptroller General of the United States, by his decision, refused to reconsider the said decisions of the Auditor for the War Department in said settlement certificates and to pay said amount of $23,626.02.

10 8. There is also due and owing petitioner the sum of $6,224.20, under the provisions of the urgent deficiency appropriation act of October 6, 1917, for transportation of United States troops in addition to the amount of $23,309.70, set forth in petitioner's 25 supplemental bills presented on appeal to Comptroller General, under date of September 15, 1921, referred to in paragraph five of the petition. While the amount of $6,224.20, due under the provisions of the urgent deficiency act of October 6, 1917, is not set up in the said 25 supplemental bills heretofore referred to and presented to the Comptroller General, yet same is due on certain transportation requests included in said 25 supplemental bills, and claim is herewith presented for the said amount of $6,224.20, the details of which are as follows:

| Date | Auditor's certificate | Item | Transp. request | No. fares | Rate as billed | Amount as billed | Revised rate, a/c urgent def'cy act | Amount | Additional claim, a/c urgent def'cy act |
|---|---|---|---|---|---|---|---|---|---|
| July 5-18 | 32878 | 3 | 246713<br>246727 | 74 | $33.47 | $2,476.78 | $38.64 | $2,859.36 | $382.58 |
| Sept. 30-18 | 34460 | 8 | 213614 | 118 | 23.22 | 2,739.96 | 27.81 | 3,281.58 | 541.62 |
| | | | 214117 | 397 | 27.92 | 11,084.24 | 32.51 | 12,906.47 | 1,822.23 |
| Jan. 4-19 | 36296 | 13 | 875815<br>875852<br>875889 | 737 | 30.04 | 22,139.48 | 30.18 | 22,242.66 | 103.18 |
| Feb. 4-19 | 37557 | 14 | 372796 | 52 | 23.22 | 1,207.44 | 27.81 | 1,446.12 | 238.68 |
| March 20-19 | 38532 | 21 | 354992 | 182 | 25.58 | 4,655.56 | 30.04 | 5,467.28 | 811.72 |
| Aug. 2-19 | 43235 | 24 | 344600 | 76 | 30.29 | 2,302.04 | 34.74 | 2,640.24 | 338.20 |
| | | | 344543 | 71 | 30.38 | 2,156.98 | 34.84 | 2,473.64 | 316.66 |
| | | | 344541 | 142 | 32.60 | 4,629.20 | 36.75 | 5,218.50 | 589.30 |
| | | | 344347 | 259 | 29.62 | 7,671.58 | 33.79 | 8,751.61 | 1,080.03 |
| | | | | | | 61,063.26 | | 67,287.46 | 6,224.20 |

The total amount of petitioner's claim is $29,553.90.

12 9. That no action upon your petitioner's foregoing claim of $29,533.90 has been had before Congress; that there is due and owing your petitioner the sum of $23,309.70, disallowed and deducted by the Auditor for the War Department, and your petitioner protested said deductions and disallowances to the Comptroller General of the United States under date of September 15, 1921, but to no avail. The Comptroller General of the United States in his decision of September 27, 1921, refused to authorize

the payment of the said amount of $23,309.70 by the Auditor for the War Department, and the said auditor and the said Comptroller General of the United States adhere to their decisions in spite of the insistence of your petitioner, and there is also due on its said 25 supplemental bills under the urgent deficiency act of October 6, 1917, the sum of $6,224.20; that no transfer or assignment of said claim or any part thereof or interest therein has been made; that said claim is now owned by your claimant, and no other person or corporation is the owner thereof or is interested therein, and that your petitioner is justly entitled to the amount herein claimed from the United States after allowing all just credits and set-offs; that your claimant has at all times borne true allegiance to the United States, and has not in any way voluntarily abetted or given encouragement to rebellion against said Government.

PRAYERS

Wherefore your claimant prays:

1. That the court render a judgment against the United
13 States in favor of your claimant for the payment by the United States to your claimant of the said sum of twenty-nine thousand five hundred and thirty-three dollars and ninety cents ($29,533.90).

2. That your claimant may have such other and further relief as the nature of the case may require and to the court may seem meet and proper.

BALTIMORE & OHIO RAILROAD COMPANY,
By GEO. M. SHRIVER, *Senior Vice President.*

Attest:
C. W. WOOLFORD,
*Secretary.*

JOHN F. MCCARRON,
*Attorney of record.*
GEORGE E. HAMILTON,
*Of counsel.*

Sworn to by Geo. M. Shriver et al. Jurats omitted in printing.

14–15 V. *General traverse*

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises having been entered on the part of the defendant, a general traverse is entered as provided by rule 34.

VI. *Submission of case*

On February 2, 1925, this case was resubmitted on merits, on stipulation of parties, without argument by Messrs. John F. McCarron, for plaintiff, and by Perry W. Howard and Louis R. Mehlinger, for the defendant.

16 VII. *Findings of fact, conclusion of law and memorandum by the court. Entered February 16, 1925.*

This case having been heard by the Court of Claims, the court upon the evidence makes the following

FINDINGS OF FACT

I

The plaintiff is a corporation duly incorporated under the laws of the State of Maryland. At the times of the different transactions hereinafter set out in these findings of fact, except during the period of Federal control, the plaintiff operated, and still operates, its system of railroads in various States of the United States, doing business as a common carrier of passengers and freight for hire and reward, under tariffs issued by it and its connecting lines, duly published and filed with the Interstate Commerce Commission according to law.

II

Before the services hereinafter described were rendered the railroad carriers of the United States generally, including the plaintiff, entered into agreements with the United States regulating fares and allowances for the transportation of United States troops and property, said agreements being variously entitled "Interterritorial military agreements," "Interterritorial military arrangements," etc. Said agreements were executed on behalf of the carriers by their duly authorized agents and on behalf of the United States by the Quartermaster General of the Army, the Chief of Bureau of Navigation of the Navy, and the Quartermaster of the United States Marine Corps. The said military arrangements, effective July 1, 1916, on page 6, contained the following stipulation:

"1. Party fares may be used as factors in constructing through net fares to and from central trunk line, southeastern, and New England territories, in the understanding that the basing points shall be Chicago, St. Louis, Memphis, Vicksburg, and New Orleans only. Neither two or more party fares nor a party fare and
17 an individual fare east or west of the gateways named may be combined in establishing a basing fare to or from the basing point. Party fares issued to and from basing points named must be authorized as one through party fare to or from such basing points, as the case may be. A party fare or an individual fare published as one through fare to or from the basing points named may, however, be combined with authorized individual fares east or west of such points in making through net fares between the eastern and western territories described, except that where through fares of like class are published they shall be used in all cases in establishing

through net fares. All fares used in establishing net fares must be lawfully on file with the Interstate Commerce Commission."

The said interterritorial military arrangement, dated December 28, 1916, and effective January 1, 1917, on page 4, contained the following stipulation:

"v. Party fares.—Method of constructing net fares by use of party fares.—For military traffic moving from territory east of Chicago, St. Louis, Memphis, Vicksburg, and New Orleans to territory west thereof, or vice versa, authorized party fares to and from the gateways named may be used in the construction of through net fares, in the understanding that the basing points will be Chicago, St. Louis, Memphis, Vicksburg, and New Orleans only.

"Neither two or more party fares, nor a party fare and an individual fare east or west of the gateways named, may be combined in establishing a basing fare to or from the basing point. Any party fare used to or from the basing points must be authorized as one through party fare to or from such basing points, as the case may be. A party fare or an individual fare published as one through fare to or from the basing points named may, however, be combined with authorized individual fares east or west of such points in making through net fares between the eastern and western territories described, except that where through fares of like class are published they shall be used in all cases in establishing through net fares; all fares used in establishing net fares must be lawfully on file with the Interstate Commerce Commission."

## III

Under date of April 7, 1917, E. L. Bevington, chairman of the railroad military committee, wrote to Quartermaster General of the Army as follows:

"Confirming my telegram of this date, as follows:

"'Yours fifth. Interested carriers have concurred proposition permit Government combine party fares over Shreveport, Louisiana, in establishing net fares between points in southeastern territory east of the Mississippi and south of the Ohio and Potomac Rivers and points in Texas to and from which party fares are authorized to and from Shreveport. This in accordance with proposition advanced you January thirteenth. Concession is made in understanding all limitations and restrictions applicable to the combinations over Vicksburg, New Orleans, and other specified gateways, under western and interterritorial military arrangements shall apply, and further that this concession on part of carriers shall not estab-
18 lish a precedent. This arrangement to take effect July first, nineteen sixteen, within territory defined and to continue during the period that such combinations are available under tariffs duly filed with Interstate Commerce Commission. Writing to-day fully specifying conditions this concession. Assume under circum-

stances no ruling comptrollers this connection necessary. Acknowledge.'

"You are informed that this question was considered at conference of directly interested lines held in Houston, Texas, March 27 last, where the recommendation as quoted below was adopted, which recommendation has since been confirmed by all southwestern carriers interested:

"'Recommended, that with the concurrence of other southwestern carriers interested, it is understood that the Government may combine party fares over Shreveport, La., in establishing net fares between points in southeastern territory east of the Mississippi and south of the Ohio and Potomac Rivers and points in Texas to and from which party fares are authorized to and from Shreveport. This concession not to be used as a precedent. In all other respects the combinations of party fares to be restricted to the gateways specifically authorized in the military arrangement—that is, Chicago, St. Louis, Memphis, Vicksburg, and New Orleans, on military traffic moving to and from eastern and southeastern territories and St. Louis and Kansas City on military traffic moving within territory west of and including Chicago, St. Louis, Memphis, Vicksburg, and New Orleans.

"'The combinations over Shreveport as herein authorized may be used beginning July 1, 1916, and may continue during the period that such combinations are available, under tariffs duly filed with the Interstate Commerce Commission.'

"As stated in foregoing, this concession under which the Government is permitted to combine party fares over Shreveport, La., on business originating in territory east of the Mississippi and south of the Ohio and Potomac Rivers, and destined to Texas points, and vice versa, is not to establish a precedent. In other words, conditions of the western and interterritorial military arrangements as to the combinations of party fares are to be confined to Chicago, St. Louis, Memphis, Vicksburg, and New Orleans on traffic from eastern and southeastern territory to territory west of those gateways and vice versa, and within western territory the only combinations of party fares permissible are those over St. Louis and Kansas City, except as stated in the above recommendation with reference to Shreveport. Triple combinations either of party fares with party fares or party fares with individual fares not permissible.

"Combinations may be made over Shreveport beginning July 1, 1916, from the territory east of the Mississippi and south of the Ohio and Potomac Rivers to points in Texas and vice versa to and from which party fares are authorized to and from Shreveport and to continue during the period that such combinations are available under tariffs duly filed with the Interstate Commerce Commission.

"It is assumed that this will obviate the necessity of any decision of the Comptroller of the Treasury with reference to combinations

over Vicksburg and Shreveport or over other points not now specifically named in the military arrangements and herein.

"Please acknowledge receipt and advise if satisfactory."

19

V

The railroads of this country are divided into seven passenger territorial groups, in each of which there is a passenger association. These associations are: New England, trunk line, central, southeastern, southwestern, western, and transcontinental, each of which functions on all commercial and military matters within its particular territory. The chairmen of the said various passenger associations constitute the committee which handles or functions on all interterritorial business; that is, business moving from one territorial group into another, of which Mr. E. L. Bevington was chairman. The movements in question were from Washington, D. C., and Newport, Ky., located in southeastern territory to San Antonio, Tex., in southwestern territory, and were governed by the interterritorial military arrangements of 1916 and 1917.

VI

At the time the transactions referred to in these findings of fact occurred, there was in force an agreement, to which the plaintiff was a party, commonly known as the "Passenger land grant equalization agreement," between the carriers of the United States generally and the Government, which reads as follows:

"For transportation of persons for whom the United States Government is lawfully entitled to reduced fares over land grant roads, the carriers whose names are signed hereto, when movement is to be made under United States requests for transportation of the issue of the War Department, Navy Department, or Marine Corps, hereby agree, subject to the exceptions filed by each individual line forming part of a through route and subject also to the general exceptions (a, b, c, d, e, f, g, h, i, j, k, l, m, n, o, p, q, and r) herein specifically stated to accept lowest net fare and lowest net excess-baggage rate lawfully available as derived, through deductions account land grant distance, via a usually traveled route for military traffic, from a lawful fare filed with the Interstate Commerce Commission as applying from point of origin to destination via such route at time of movement."

VII

The Southeastern Joint Party Tariff K2, I. C. C. F-2660, in force at the time the service was performed, authorized the use of a party fare between Washington, D. C., and Vicksburg, Miss., and between Newport, Ky., and Vicksburg, Miss. It contained the following stipulation, on page 31:

"33. Party fares to destinations or from points of origin not shown in this tariff will be made by adding the party fares shown in this tariff to the party fares shown in other tariffs as lawfully on file with the Interstate Commerce Commission, provided that if the party fare so made exceeds the party fare to or from a point beyond on the same through line as shown in this tariff the latter fare will apply. Party fares so made will apply via all routes authorized under this tariff to or from contiguous points of origin or of destination."

20 The Vicksburg, Shreveport & Pacific Railway Company Party Circular No. 7077, I. C. C. No. 2142, authorized the use of a party fare between Vicksburg, Miss., and Shreveport, La. The Texas Louisiana Party Tariff 2, I. C. C. 465, authorized the use of a party fare between San Antonio and Eagle Pass, Tex., and Shreveport, La.

The gross party fare between Washington, D. C., and Vicksburg, Miss., Southeastern Party Tariff K2, I. C. C. 2660, was $21.35. The gross party fare between Newport, Ky., and Vicksburg, Miss., same tariff, was $14.15. The gross party fares between Shreveport, La., and Vicksburg, Miss., V. S. & P. Circular 7077, I. C. C. 2142, was $3.88. The gross party fare between Shreveport, La., and San Antonio, Tex., Texas-Louisiana Party Tariff No. 2, I. C. C. 465, was $8.50, and the gross party fare between Shreveport and Eagle Pass, Tex., same tariff, was $11.95.

Adding the gross party fare from Washington to Vicksburg, $21.35, to the gross party fare from Vicksburg to Shreveport, $3.88, gives a gross party fare from Washington to Shreveport of $25.23, and with a combination on Shreveport of $8.50 gross fare from Shreveport to San Antonio, gives a gross party fare from Washington to San Antonio of $33.73.

Adding the gross party fare from Newport to Vicksburg, $14.15, to the gross party fare from Vicksburg to Shreveport, $3.88, with a combination on Shreveport of $8.50 gross party fare from Shreveport to San Antonio, gives a gross party fare of $26.53 from Newport to San Antonio, and with a combination on Shreveport of $11.95 gross party fare from Shreveport to Eagle Pass gives a gross party fare of $29.98 from Newport to Eagle Pass.

The fare from Washington to San Antonio on June 20, 1916, with land-grant deductions, was $28.25, and on November 3, 1916, the fare, with land-grant and 5 per cent military deduction, was $27.35. These are the dates applicable to the two movements from Washington to San Antonio, and the difference is due to 5 per cent military allowance on the movement in November.

The net fare from Newport to San Antonio was $21.15, and from Newport to Eagle Pass was $24.60 at the time of the said movements.

## VIII

At different times during the years 1916 and 1917, beginning in June, 1916, and ending in December, 1917, the plaintiff and its connecting carriers transported over its respective lines, upon Government transportation requests, numerous movements of United States troops. For this service the plaintiff, as initial carrier, presented its bills, based on net per capita fares obtained by combinations only on the western gateways specified in the interterritorial arrangements of 1916 and 1917, to the proper disbursing officer. The bills so rendered, Nos. 32288, 32289, 32084, 34076, 32080, 33657, 33868, 32282, 34080, 33074, 32494, 32293, 33076, 50068, 34291, 33665, 50077, 36189, 50066, 50067, 36216, 34295, 50078, 36223, and 34078, except bills Nos. 32293, 33076, and 34295 were paid as presented in the sum of $289,774.89, of which amount $172,210.31 was, at different times, from November 17, 1916, to December 20, 1917, inclusive, paid to plaintiff, and the balance $117,564.58, was at different times, from Feb-
21 ruary 11, 1918, to April 16, 1918, inclusive, paid to the Director General of Railroads and credited by him to plaintiff.

General Order No. 17 is attached to these findings as Appendix A and made part of this finding by reference.

## IX

The bill No. 32293 T/R 20383 was rendered for $3,721.39, and upon refusal of the disbursing officer to pay it was restated at $3,705.94, a difference of $15.45, in which amount it was paid and received by plaintiff without protest on June 12, 1917. Bill No. 33076 T/R 61787 was rendered for $7,782.97, based on a net per capita fare of $26.03, and upon refusal of the disbursing officer to pay it was restated at $7,343.44 by plaintiff, based on a net per capita fare of $24.56, in which amount it was paid on March 25, 1918, to the Director General of Railroads and received without protest. The plaintiff presented a supplemental bill No. 33076–A to the Auditor for the War Department for the difference between the net fares of $25.87, $7,735.13, and the net fares of $24.56, $7,343.44, a difference of $391.69, which was disallowed by the auditor on July 24, 1918, without protest by plaintiff. Bill No. 34295 T/R 354992, was rendered for $4,655.56, based on a net per capita fare of $25.58, and upon refusal by the disbursing officer to pay it plaintiff restated it at $4,469.92 based on a net per capita fare of $24.56, in which amount it was paid to the Director General of Railroads on April 1, 1918, and received by him without protest. The plaintiff filed a supplemental bill for the amount dropped in the restatement, $185.64, with the auditor, who disallowed same on October 9, 1918, without protest from plaintiff.

Bill No. 34078 (T/Rs 34460, 344543, 344347, and 344541) was rendered by plaintiff for $14,919.98 and was paid by the disbursing officer to the Director General of Railroads in full as presented on

April 16, 1918. On March 25, 1919, plaintiff presented a supplemental bill, No. 34078–A, to the auditor for $16,759.80, a difference of $1,839.82, which was disallowed by him without protest from plaintiff on April 23, 1919.

## X

The Auditor for the War Department in auditing the accounts of said disbursing officer disallowed as overpayments by him of plaintiff's said bills amounts aggregating $20,978.45, and these amounts were deducted at different times from March 12, 1920, to September 17, 1920, inclusive, from bills of the Railroad Administration by the auditor. Of the said deductions amounts aggregating $16,588.13 were obtained by routing so as to make combinations on points not authorized by the interterriotrial military arrangements of 1916 and 1917. Deductions aggregating $1,780.89 were obtained by adding the gross party fare from Washington, D. C., to Vicksburg, Miss., $21.35, authorized in the Southeastern Joint Party Tariff K2, I. C. C. F–2660, to the gross party fare from Vicksburg, Miss., to Shreveport, La., of $3.88, authorized by the Vicksburg, Shreveport & Pacific Railway Company Party Circular No. 7077, I. C. C. 2142, making a through gross party fare of $25.23 from Washington to Shreve-
22 port, and adding the gross party fare of $8.50 authorized by the Texas-Louisiana Party Tariff No. 2, I. C. C. 465, from Shreveport, La., to San Antonio, Tex., making a through gross party fare of $33.73 from Washington to San Antonio, and a net fare of $28.25 in June, 1916, and a net fare of $27.35 in November, 1916. By adding the gross party fare, $14.15, authorized by the Southeastern Joint Party Tariff K2, I. C. C. F–2660, from Newport, Ky., to Vicksburg, Miss., to the gross party fare from Vicksburg, Miss., to Shreveport, La., of $3.88, authorized by the Vicksburg, Shreveport & Pacific Railway Company Party Circular No. 7077, I. C. C. 2142, making a gross party through fare from Newport to Shreveport of $18.03, and by adding the gross party fare of $8.50 from Shreveport to San Antonio, Tex., authorized by the Texas-Louisiana Party Tariff No. 2, I. C. C. 465, making a gross party fare of $26.35 from Newport to San Antonio, and a net party fare of $21.15, and adding the gross through party fare from Newport to Shreveport of $18.03 to the gross party fare of $11.95 from Shreveport to Eagle Pass, Tex., authorized by the same tariff, making a gross through party tariff of $29.98 from Newport to Eagle Pass and a net party fare of $24.60.

## XI

The amount of the deductions by the auditor obtained by routing by way of Chattanooga, Tenn., Meridian, Miss., and Shreveport, La., an authorized and a usually traveled route for military traffic, on the basis of land-grant deductions and 5 per cent military allowance from first-class individual fares, was $2,609.43. The plaintiff

based its net fares from Columbus and Cincinnati, Ohio, by a route through St. Louis, Mo., and Texarkana, Ark., to points in Texas; also an authorized and usually traveled route for military traffic, but with less land-grant mileage.

The average mileage of the routes by which the troops were actually moved was greater than the average mileage of the routes by which the fares were computed by either the accounting officers or the plaintiff.

## XII

The difference between the amount paid to plaintiff by the Government on the basis of 100 per cent land-grant deduction for the transportation of the United States troops described in Finding VIII and the amount to which it was entitled on the basis of a 50 per cent land-grant deduction under the equalization agreement set out in Finding VI and the act of October 6, 1917 (40 Stat. 361), is $2,208.55, which has not been paid in whole or in part to plaintiff.

## XIII

Of the amount deducted by the auditor from Railroad Administration bills at different times from March 12, 1920, to September 17, 1920, $20,978.45, the sum of $13.58 was refunded by plaintiff to the War Department on July 7, 1919, and the sum of $20,939.52 was charged back to plaintiff by the Railroad Administration
23 in December, 1921, through the account "Federal assets collected," and $25.35 was charged back to plaintiff by the Railroad Administration through the account "Corporate transactions."

## XIV

In December, 1921, the plaintiff paid the amount charged back to plaintiff through the account "Federal assets collected" ($20,939.52) into the "trustee fund" to credit of the Railroad Administration, and charged the same on its books in a suspense account against the War Department.

The trustee account was created by General Order No. 68, issued February 24, 1920, to take effect at the termination of Federal control, at 12 o'clock midnight, February 29, 1920. By this order the different railroads that had been under Federal control were made trustees of the United States Railroad Administration to collect all of its unpaid bills and to pay all of its outstanding liabilities and generally to wind up all of its unfinished transportation business. All Federal cash pertaining to the transportation business was turned over to the railroads to be carried in this account. Any moneys erroneously paid into the trustee account by deposit in the banks where such accounts were kept could be withdrawn by a railroad company making such deposits with the consent of the Director General of Railroads.

General Order No. 68 is attached to these findings as Appendix B and is made part of this finding by reference thereto.

## XV

The sum of $25.35 deducted from a Railroad Administration bill on August 14, 1918, on account of alleged overpayment by the disbursing officer of corporate bill before Federal control and charged back to the plaintiff in December, 1921, through the account "Corporate transactions" by the Railroad Administration was paid to said Railroad Administration by plaintiff in the final settlement of July 27, 1922, through said account "Corporate transactions."

The act of February 28, 1920 (41 Stat. 456, 457), provided for the termination of Federal control.

On February 24, 1920, General Order No. 66, effective February 29, 1920, was issued by the United States Railroad Administration for the purpose of outlining the method to be followed in the separation of the accounts of the Railroad Administration and the different railroads under its control when the railroads should be returned to their owners, which provided among other thing that:

"SEC. 5. (a) * * * If during the period of Federal operations amounts representing overcharge freight claims paid out of Federal funds, affecting traffic, the revenues from which were included in corporation revenue or credited to it as lay-over revenue on the Federal books, or amounts representing loss and damage claims paid out of Federal funds, chargeable to the period prior to Federal control, were carried on the Federal books in suspense accounts pending adjustment thereof with other carrier corporations, or pending receipt of additional information wherewith to dispose of the amounts carried, and such amounts are carried in suspense account
24 as of February 29, 1920, they shall be charged to the corporation. Such amounts shall on the Federal books be charged to the account '(Name of corporation)—Corporate transactions,' and on the corporate books should be charged to an appropriate suspense account and credited to the account 'U. S. Government—Corporate transactions.'"

General Order No. 66 is attached to these findings as Appendix C and is made part hereof by reference.

## XVI

The material parts of the final settlement agreement of July 27, 1922, between the director general and the plaintiff read as follows:

"The said director general hereby acknowledges payment of the sum of one dollar ($1.00) by said companies, the receipt whereof is hereby acknowledged, in full satisfaction and discharge of all claims, rights, and demands of every kind and character, which the said director general, or anyone representing or claiming to represent the director general, the United States, or the President, now

has or hereafter may have or claim against the said companies, or any of them growing out of or connected with the possession, use, and operation of the companies' property by the United States during the period of Federal control, or out of the contract between the parties dated the 24th day of June, 1919; and the said companies, both jointly and severally, hereby acknowledge the return to and receipt by them of all the property and rights which they are entitled to, and further acknowledge that the director general has fully and completely complied with and settled all obligations on his part, or on the part of the United States, or the United States Railroad Administration, growing out of Federal control.

"The purpose and effect of this instrument is to evidence a complete and final settlement of all demands, of every kind and character, as between the parties hereto, growing out of the Federal control of railroads, save and except that the following matters are not included in this adjustment and are not affected thereby:

"'EXCEPTIONS

* * * * * * * *

"'2. This settlement does not include or affect any moneys or assets of the director general turned over to the companies, or any of them, pursuant to General Order No. 68, the account created by this order to be adjusted as though this agreement had not been made.'"

## XVII

On August 25, 1920, a complete settlement was made between the War Department and the Director General of Railroads of all unsettled accounts for transportation furnished by the Railroad Administration to the War Department between January 1, 1918, and March 1, 1920, the period of Federal control of railroads, and the amount paid by the War Department to the Railroad Administration in such settlement was $38,169,294.39.

25 On August 26, 1920, the comptroller of the Railroad Administration issued, with the approval of the Director General of Railroads, accounting circular 152, which reads:

"*To each carrier, the properties of which were under Federal control at the termination thereof at midnight, February 29, 1920:*

"A settlement has been made between the War Department and the director general for all unpaid charges for passenger and freight transportation service, including Pullman fares and demurrage charges, rendered by the director general.

"Accounting officers are directed to close into an account styled 'War Department transportation charges' all unpaid accounts against the War Department carried in the Federal books covering such transportation service and to discontinue rendering Federal bills against the War Department for services of this nature.

"The account 'War Department transportation charges' shall be closed into the administration ledger control account and reported as a special item on Form AC–512–A in the same manner as prescribed in Accounting Circular 82 for reporting other items transferred to the administration ledger control account. Record of the balance so transferred shall be kept in the Federal accounts in such detail that it may be readily audited by representatives of the Railroad Administration.

"Special attention is directed to the fact that the settlement above referred to involves the War Department only, that it does not include amounts due for the construction of tracks, service at cantonments, etc., and does not include bills rendered in the Federal accounts for transportation service performed prior to Federal control.

"Unpaid bills carried in the Federal accounts against the War Department, for transportation service performed prior to Federal control, shall not be closed into the account 'War Department transportation charges,' but instead shall be charged to the corporation through the account '(Name of corporation)—Corporate transactions.' Such charges against the corporation, when reported on settlement statement Form AC–510, shall be allocated to the quarter in which the corporation was originally credited with the amount, or bill was stated in the accounts."

## XVIII

In pursuance of the authority contained in section 1 of the act of March 21, 1918 (40 Stat. 451–453), known as the "Federal railroad control act," the Director General of Railroads, on June 24, 1919, entered into an agreement with the Baltimore & Ohio Railroad Co. and its affiliated companies.

A copy of the said agreement between the Director General of Railroads and the Baltimore & Ohio Railroad Company, dated June 24, 1919, is made part of this finding by reference thereto.

### CONCLUSION OF LAW

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover the sum
26 of $16,588.13 (Finding X) and the sum of $2,208.55 (Finding XII), or a total of $18,796.68.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of eighteen thousand, seven hundred and ninety-six dollars and sixty-eight cents ($18,796.68).

### MEMORANDUM

1. The several items claimed, as set forth in Finding IX, are not recoverable where the bills were rendered to disbursing officers and payments by him were received. (See Oregon-Washington R. & N.

Co., 255 U. S. 339; 54 C. Cls. 131; Baltimore & Ohio Railroad Company case, 52 C. Cls. 468.)

2. The deductions made by the auditor on account of combinations of fares, namely, $1,780.89 (Finding X), were proper. The military arrangements of 1916 and 1917 provided that any party fare used to or from basing points should be authorized as a through party fare. The Southeastern Joint Party Tariff K2 (Finding VII) provides methods for combination fares. The combinations were properly made on Vicksburg and Shreveport. (See Norfolk Southern Railroad Company case, 59 C. Cls. 517.)

3. The auditor's deductions, aggregating $16,588.13 (Finding X), obtained by routing or making combinations on points not authorized by the interterritorial military arrangements were erroneous. (See Atchison, Topeka & Santa Fe Railroad Company case, 256 U. S. 205.)

4. The auditor's routing of the movements and consequent land-grant deductions (Finding XI), were authorized by the equalization agreement (Finding VI).

5. The plaintiff is entitled to recover the item of $2,208.55 (Finding XII), because of the act of October 6, 1917 (40 Stat. 361).

6. The questions of payment of corporate bills to the director general, the deductions by the auditor, and the subsequent settlement between the plaintiff and the Railroad Administration are settled by cases of Reading Company, No. 34747, Southern Railway Company case, No. B–118, and New York, New Haven & Hartford Railroad Company case, No. B–44, decided January 5, 1925.

27 APPENDIX A

## United States Railroad Administration, Director General of Railroads

### GENERAL ORDER NO. 17

WASHINGTON, D. C., *April 3, 1918.*

*To chief executive officers of carriers subject to Federal control:*

It is hereby ordered that the following rules and regulations shall be observed and shall govern the recording of and accounting for all transactions which arise during Federal control:

(1) For accounting purposes Federal control began as of January 1, 1918. Immediate steps shall be taken by each carrier subject thereto, to open new and separate books of accounts, such as cash books, general and subsidiary ledgers and journals, and all supporting and subsidiary books and records incident thereto, upon which shall be recorded transactions which arise under and are incident to Federal control on and after January 1, 1918. Such books shall be designated and are hereinafter referred to as "Federal books."

(2) The totals of the accounts "Cash," "Demand loans and deposits," and "Time drafts and deposits" appearing on the corpora-

tion's books as of December 31, 1917, shall be transferred to the Federal books, debited to accounts of the same titles, and credited to a deferred liability account styled "(Name of corporation)—Cash—December 31, 1917." On the corporate books the amount of such balances should be transferred to a deferred asset account styled "U. S. Government—Cash—December 31, 1917." All cash transactions subsequent to December 31, 1917, relating to operations prior or subsequent thereto, shall be recorded in the Federal cash book opened as of January 1, 1918.

(3) The total of account "Net balance receivable from agents and conductors" appearing on the corporation's books as of December 31, 1917, shall be transferred to the Federal books, debited to an account of the same title, and credited to a deferred liability account styled "(Name of corporation)—Agents' and conductors' balances—December 31, 1917." On the corporate books the amount of such balances should be transferred to a deferred asset account styled "U. S. Government—Agents' and conductors' balances—December 31, 1917."

(4) The total of account "Materials and supplies" appearing on the corporation's books as of December 31, 1917, shall be transferred to the Federal books, debited to an account of the same title, and credited to a deferred liability account styled "(Name of corporation)—Materials and supplies—December 31, 1917." On the corporate books the amount of such balance should be transferred to a deferred asset account styled "U. S. Government—Material and supplies—December 31, 1917."

(5) In addition to the assets above specified there shall be likewise transferred to the Federal books and similarly recorded thereon such other working assets of the corporation as may be mutually agreed upon.

(6) There shall be currently entered, upon such Federal books, in the manner and under the rules and regulations prescribed by the Interstate Commerce Commission, or which may hereafter be prescribed, all transactions involving revenues, expenses, taxes and rentals, and other items corresponding to those which constitute the basis upon which the standard return to the carrier shall be determined. Such entries shall include corresponding assets and liabilities and the cash settlement thereof; also all transactions involving materials and supplies subsequent to December 31, 1917.

(7) Transactions of the corporation, including those arising out of cash receipts or disbursements, which do not affect or which do not enter into and form a part of those used in determining the basis of standard return, such as interest and dividends received or paid, miscellaneous rents, and other similar corporate transactions, including additions and betterments, shall not be recorded on or passed through such Federal books unless such transactions be negotiated and conducted for account of the corporation by or under the direction of the director general. Where such income transactions are negotiated and conducted by or under the direction of the director general the transactions shall be recorded on the Fed-

eral books but credited or charged to an account to be opened, styled "(Name of corporation)—Corporate income transactions." Concurrently, corresponding entries should be made on the corporate books charging or crediting the accounts prescribed by the Interstate Commerce Commission or which may hereafter be prescribed, the offset being in an account styled "U. S. Government—Corporate income transactions." Where additions and betterments are made by or under the direction of the director general, the expenditures shall be charged on the Federal books to a deferred asset account "(Name of corporation)—Additions and betterments." Concurrently, entries should be made on the corporate books, charging the appropriate accounts and crediting a deferred liability account "U. S. Government—Additions and betterments."

(8) Current or operating assets, other than those prescribed in paragraphs (2), (3), (4), and (5) hereof, such as, balances due from individuals and companies, and liabilities, such as, vouchers, payrolls, etc., which were due to or by the corporation as of December 31, 1917, shall not be transferred in detail to the Federal books; but as and when such assets are collected or the liabilities are paid, they shall be credited or debited, as the case may be, on the Federal books to a deferred liability account styled "(Name of corporation—Assets, December 31, 1917, collected," or to a deferred asset account "(Name of corporation)—Liabilities, December 31, 1917, paid." There should be concurrently made on the corporate books, corresponding entries debiting and crediting the U. S. Government with assets collected and liabilities paid.

(9) Transactions relating to operations, as defined in paragraph (6) hereof, if not previously accrued, shall be included in and shall form a part of the operating results of each carrier regardless of the date thereof. Items clearly applicable to the period prior to January 1, 1918, commonly called "lap-overs," shall be ascertained currently, set up on the Federal books, and included in the appropriate accounts as heretofore. At the end of each month, the total of "lap-over" credit items shall be charged to an unadjusted debit account styled "Revenue prior to January 1, 1918," and credited to a deferred liability account styled "(Name of corporation)—Revenue prior to January 1, 1918," and credited to a deferred liability account styled "(Name of corporation)—Revenue prior to January 1, 1918." The total of "lap-over" debit items shall be credited to an unadjusted credit account styled "Expense prior to January 1, 1918," and charged to a deferred asset account styled "(Name of corporation)—Expense prior to January 1, 1918." Operating revenues which have been accrued currently in accordance with the established practice of the carrier, shall be considered as current revenues and not as "lap-over" items.

(10) The acounts between the U. S. Government and the corporation, for which provision is made herein, shall be adjusted in such manner as may be hereafter agreed upon.

(11) Inquiries as to the interpretation and application of the provisions of this order and the procedure to be observed under its requirements shall be addressed to the Director of Public Service and Accounting.

W. G. McAdoo,
*Director General of Railroads.*

APPENDIX "B"

UNITED STATES RAILROAD ADMINISTRATION,
*Washington, February 24, 1920.*

GENERAL ORDER NO. 68

The return of properties operated by the United States Railroad Administration to their owners at midnight February 29, 1920, necessitates the issuance of instructions in reference to the disposition of Federal cash and securities on hand February 29, 1920, for the proper handling thereof, and for cash collections of assets and payment of liabilities arising out of Federal operations. The word "corporation" hereinafter used refers to the corporation, receiver, or operator of the property to whom the property is returned at midnight February 29, 1920.

The corporation whose property is under Federal operation at midnight February 29, 1920, is hereby authorized after midnight February 29, 1920, to receive for the account of the Director General of Railroads cash realized in liquidation of the assets outstanding on the Federal books as of midnight February 29, 1920, belonging to the Director General of Railroads or arising subsequently from the operation of the property of the corporation under Federal control prior to midnight of February 29, 1920, and to pay out of Federal funds Federal liabilities outstanding at midnight February 29, 1920, or expenses arising out of Federal operation of its property not stated as of February 29, 1920, subject, however, to the following limitations and instructions:

Federal treasurers' and paymasters' cash on hand February 29, 1920

Cash on hand and in banks charged to the account of Federal treasurers and paymasters and their assistants at midnight February 29, 1920, shall be transferred to the corporation in trust for the Director General of Railroads.

Federal treasurers in conjunction with Federal auditors shall arrange for the transfer of said cash as of midnight February 29, 1920, from the respective Federal officers having such funds to the corporation and shall take its receipt therefor in quadruplicate, one copy to be left with the corporation treasurer, one to be filed with the Federal cash records, one to be mailed to the Director of the Division of Finance, and the other to be filed with the audit of the cash accounts in this paragraph referred to, which should be in

accordance with the form of reports referred to in P. S. & A. Circular No. 54. If in the transfer of funds to the Director General of Railroads at the beginning of Federal control postage and revenue stamps were included as cash items, if on hand at the end of Federal control they should be similarly treated in the transfer to the corporation. Corporate officers shall be instructed to continue the funds on deposit in the banks in which they now are and cash received, not on deposit, shall be placed on deposit in the same banks, and all deposits shall be carried in the name of the corporation, in trust, as trustee, for the Director General of Railroads. Federal treasurers in conjunction with Federal auditors shall also arrange to transfer to the corporate treasurers all securities, notes, and other evidences of indebtedness in their possession and belonging to the Director General of Railroads, taking receipts therefor in quadruplicate and distributing same according to provision in the preceding paragraph. Instructions for subsequent disposition of such securities, notes, and other evidences of indebtednesses will be given by the Director of the Division of Finance.

Cash in hands of agents, conductors, pursers, and stewards

Cash in hands of agents, conductors, pursers, and stewards at midnight February 29, 1920, and except as otherwise provided in General Orders Nos. 66 and 67, section 2 (*f*), cash thereafter collected applying on accounts outstanding as of their balance sheets, or accounts current for February, 1920, when remitted to and received by the corporation or by banks credited to the corporation, shall be paid into the funds and deposits in banks held in trust by the corporation as trustee for the Director General of Railroads.

Cash in working funds

The cash remaining as of midnight February 29, 1920, in working funds and cash in transit February 29, 1920, to such funds in the hands of officers, agents, employees, and others, if not used during the month of March, 1920, to pay Federal expenses and liabilities, shall be remitted to the treasurer of the corporation and be paid into the funds and deposits in banks held in trust by the corporation as trustee for the Director General of Railroads.

Cash from other assets

Cash collected in liquidation of Federal assets and cash collected by the corporation from employees by pay roll deductions for Liberty Loan bond subscriptions, overpayment of wages, etc., due "Federal operations" shall be paid into the funds and deposits in banks held in trust by the corporation as trustee for the Director General of Railroads.

Provision for paying out Federal funds by corporations

Federal funds in the custody of the corporation in trust as trustee for the Director General of Railroads shall not be subject to check of nor paid out by the corporation except as trustee for the Director General of Railroads in payment of Federal liabilities and expenses: Provided, however, That except upon specific authority of the Director of the Division of Finance payment of Federal liabilities and expenses herein below mentioned shall not be made:

1. Any amounts due or claimed to be due from the Director General of Railroads to said corporation or to any corporation, receiver, or any other person owning, controlling, or operating prior to Federal control the properties relinquished from Federal control at midnight, February 29, 1920.

2. Payment for invoices for materials and supplies ordered prior but received by the carrier subsequent to February 29, 1920. Provided, however, payment may be made to the corporation in settlement of the monthly amount paid out of corporation funds in settlement of lap-over expenses or refunds of overcharges particularly referred to in section 7 of General Orders Nos. 66 and 67.

Subject to such further directions as may hereafter be issued, no payment for the Director General of Railroads herein authorized shall be made unless on voucher or draft properly approved by the corporate officer or officers having authority to approve like payments for the corporation out of its own funds, and the corporation shall exercise the same care and adopt the same safeguards in connection with payments from Federal funds as it employs in respect to its own funds. Nor shall payment be made in respect to any item concerning which, during or subsequent to Federal operation, objection has been or shall have been made by the Director General, a director, or the general counsel of the United States Railroad Administration, the comptroller, a regional director, a Federal manager, a Federal treasurer, a Federal auditor, or the subordinate officers of the last three officers named, where the objection of such subordinate officer has not been overruled and removed, unless specially authorized subsequent to February 29, 1920, by the appropriate division of the Railroad Administration or by the comptroller.

Payments to persons or corporations, other than carriers, federally operated prior to March 1, 1920, shall comprehend the offset of any indebtedness that may be due from such companies; otherwise such payments shall not be made unless otherwise ordered by the Director Division of Finance.

No payment shall be made for material and supplies purchased and delivered prior to midnight, February 29, 1920, based on prices in excess of contract stipulations entered into prior to February 29, 1920, or prices at which the material was ordered, unless authorized by the Director of the Division of Purchases.

Federal financial requirements

Beginning March 1, 1920, chief executives of corporations should advise the Director of the Division of Finance at the beginning of each week of the Federal cash situation for the forthcoming two weeks. Such advice shall indicate the cash on hand, the probable amount of receipts from liquidation of Federal assets, and the approximate payments to be made during the first and second weeks separately.

The Director of the Division of Finance will endeavor to keep the corporation in funds for Federal purposes, but in the event of pay rolls or other significant indebtedness of the administration coming due and insufficient Federal funds are on hand, chief executives should telegraph the Director of the Division of Finance therefor in time to allow action thereon to be taken.

The foregoing instructions shall not apply as to those lines of railroads in the United States under Federal operation at midnight, February 29, 1920, that are operated thereafter as parts of a common carrier system or systems in countries adjacent to the United States and whose treasurer and accounting officer and general accounts are located in those countries. In such cases special instructions will be given by the Director Division of Finance.

WALKER D. HINES,
*Director General of Railroads.*

UNITED STATES RAILROAD ADMINISTRATION,
*Washington, February 28, 1922.*

GENERAL ORDER NO. 68–A

After February 28, 1922, no payments account liabilities arising out of Federal control shall be made out of the trustee account created by General Order No. 68 except, first, claims in which settlement has been definitely agreed upon and approved by the Railroad Administration prior to March 1, 1922; second, claims upon which suit has been instituted prior to March 1, 1922; third, straight overcharge claims.

Claims based upon pay checks, vouchers, taxes, and invoices for materials and supplies must be forwarded to L. J. Tracy, Comptroller, United States Railroad Administration, Washington, for final disposition. All other claims presented subsequent to February 28, 1922, must be declined.

JAMES C. DAVIS,
*Director General.*

Confirmation of telegram of February 28, 1922.

## APPENDIX "C"

UNITED STATES RAILROAD ADMINISTRATION,
*Washington, February 24, 1920.*

GENERAL ORDER NO. 66

To provide accounting procedure incident to the termination of Federal control and to reestablish as of the end of Federal control the instructions relative to allocation of revenues and expenses as between the United States Railroad Administration and the corporations, applied as of the beginning of Federal control, it is ordered that the following regulations be observed in accounting for transactions relating to the Federal control of transportation systems:

1. Books and accounts

The separate books of account, such as the Federal Treasurer's cash book, the general and the necessary subsidiary ledgers and journals, and all supporting books and records relating thereto, upon which are recorded transactions incident to Federal control and which have been designated as "Federal books," shall be continued in use after February 29, 1920, for the purpose of recording therein Federal control transactions after the period of Federal operation ceases and until further ordered. Transactions arising out of operations subsequent to February 29, 1920, shall not be entered on the Federal books, but should be entered on the corporate books; likewise all transactions not previously accounted for either on the Federal or corporate books relating to the period prior to Federal control should be entered on the corporate books and shall be omitted from the Federal books.

2. Cash

(a) The Federal Treasurer's cash book, in which is recorded the balance of cash on hand February 29, 1920, shall be continued in use after that date until further ordered, and all Federal control cash transactions arising after the end of Federal control shall be entered in such cash book in accordance with instructions here following.

(b) The total of the amount of cash, if any, transferred to the corporation from the cash in the hands of the Federal Treasurer in accordance with General Order No. 68 shall be charged on the Federal books to a deferred asset account styled "(Name of corporation)—Federal cash, February 29, 1920." The amount of such cash transferred should be entered in the corporate cash book, and on the corporate general books should be debited to the appropriate account or accounts and credited to a deferred liability account styled "U. S. Government—Federal cash, February 29, 1920."

(c) The balance in the account appearing on the Federal books representing cash in transit applicable to accounts for the period prior to March 1, 1920, shall be charged on such books to a current asset account styled "(Name of corporation)—Federal cash in transit, February 29, 1920." On the corporate books corresponding entry should be made, debiting the appropriate account or accounts and crediting a current liability account styled "U. S. Government—Federal cash in transit, February 29, 1920." When such cash is received by the corporation it shall be paid over daily into the Federal cash account and entered on the Federal books as a credit to the account styled "(Name of corporation)—Federal cash in transit, February 29, 1920." On the corporate books corresponding entry should be made debiting the account "U. S. Government—Federal cash in transit, February 29, 1920."

(d) When cash is realized from assets of the director general the amount thereof shall be credited through the Federal cashbook to the proper accounts. This refers to assets recorded as of February 29, 1920, and those subsequently recorded on the Federal books. This cash shall not be entered on the corporate books in any manner, except as provided in 2 (c), 2 (f) and section 7.

(e) All authorized payments of liabilities of the Director General made out of Federal cash shall be charged on the Federal cashbook to the proper accounts. Such payment should not be entered on the corporate books in any manner, except as provided in section 7.

(f) On and after March 1, 1920, all remittances (except those deposited in the Federal cash and accounted for as applicable to the agents' and conductors' accounts for February, 1920) received from agents and conductors shall, in the first instance, be entered in the corporate cashbook and credited to the appropriate accounts on the corporate general books. To the extent that items standing in the account "Agents' and conductors' balances" as of February 29, 1920, are included in such remittances, the amount shall be reported to the accounting department and the aggregate paid over daily into the Federal cash. Such payments should be charged on the corporate books to the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920." On the Federal books the payments shall be charged to "Cash" and credited to the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." This method of daily settlements shall apply to agents' and conductors' unremitted cash on hand at midnight February 29, 1920, and to all collections made by agents and conductors during the month of March, 1920, applicable to balances of February 29, 1920. The balance in the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920," after such collections have been credited thereto shall be treated as an open account, includible on quarterly settlement Form AC–510.

3. Agents' and conductors' balances

(*a*) The total of the accounts representing amounts carried as due from agents and conductors appearing on the Federal books as of February 29, 1920, shall be transferred to the corporate books and debited on the Federal books to an account styled "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." On the corporate books the amount of such balances should be debited to the appropriate account or accounts and credited to a deferred liability account styled "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920."

(*b*) Any portion of the balance in the account representing agents' and conductors' balances at December 31, 1917, credited on the Federal books to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917," which was subsequently transferred from the agents' and conductors' accounts to accounts receivable, or other asset or liability accounts, other than those prefixed with the name of the corporation, or is in the balances carried to the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920," and is uncollected as of February 29, 1920, shall also be transferred on the Federal books to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917." On the corporate books the amount should be debited to the appropriate accounts and credited to the account "U. S. Government—Agents' and conductors' balances, December 31, 1917."

(*c*) If amounts representing advances and prepaid charges on waybills outstanding December 31, 1917, were transferred to the Federal books, the balances in the advances and prepaid accounts shall be transferred to the corporate books, and on the Federal books included in the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." On the corporate books the amount should be carried to the proper account or accounts, and should be included in the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920."

If amounts of advances and prepaid charges on waybills dated prior to January 1, 1918, transferred from the corporate to the Federal books and included in the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917," are outstanding as of February 29, 1920, the amounts thereof shall on the Federal books be transferred from the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920," to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917." On the corporate books such amounts should be transferred from the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920," to the account "U. S. Government—Agents' and conductors' balances, December 31, 1917." The amounts to be transferred to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917,"

provided in paragraphs (*b*) and (*c*) of this section, shall be reported on Form AC–510 as for the first quarter of 1918.

(*d*) In the event that amounts included in the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920," set up on the corporate books as provided in paragraph 3 (*a*) hereof are later found to be chargeable to such accounts as "Material and supplies," "Additions and betterments," "Individuals and companies," or other accounts on or properly includible on the Federal books, entry should be made on the corporate books charging the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920," crediting the amount thereof to agents' and conductors' accounts. On the Federal books an entry covering such items shall be made charging the appropriate account or accounts and crediting the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." Amounts relating to material and supplies shall be, on the Federal books, charged to the account "(Name of corporation)—Federal material and supplies, February 29, 1920," instead of to "Material and supplies." An additional entry on the corporate books should be made in respect to the amounts chargeable to "Material and supplies" account, debiting "Material and supplies" account and crediting "U. S. Government—Federal material and supplies, February 29, 1920."

4. Material and supplies

(*a*) The total of the account "Material and supplies" appearing on the Federal books as of February 29, 1920, shall be transferred to the corporate books and debited to a deferred asset account on the Federal books styled "(Name of corporation)—Federal material and supplies, February 29, 1920." On the corporate books the amount of such balance should be charged to the appropriate account and credited to a deferred liability account styled "U. S. Government—Federal material and supplies, February 29, 1920."

(*b*) All material and supplies received prior to March 1, 1920, shall be accounted for in the Federal books. All invoices for such material and supplies referred to in the previous sentence as are vouchered after the close of the accounts for the month of February, 1920, shall be covered by Federal form of vouchers and the cost of all such material and supplies shall be added to the account "(Name of corporation)—Federal material and supplies, February 29, 1920." On the corporate books the amount of such vouchers should be charged to appropriate account for material and supplies and credited to the account "U. S. Government—Federal material and supplies, February 29, 1920."

(c) Amounts paid prior to March 1, 1920, for material and supplies not received at midnight February 29, 1920, shall not be included on the Federal books in the account representing stock of material and supplies or in the account "(name of corporation)—Federal material and supplies, February 29, 1920." Neither shall

material represented thereby be included in the inventory taken in accordance with the provisions of General Order No. 62. Such amounts shall instead be charged on the Federal books to an appropriate deferred asset account.

When the material and supplies therefor are received, or used by the corporation, the amounts shall, on the Federal books, be charged to the corporation through a deferred asset account styled "(Name of corporation)—Federal assets collected," and should, on the corporate books, be charged to the appropriate account and credited to a deferred liability account styled "U. S. Government—Federal assets collected."

(d) Material and supplies ordered prior to March 1, 1920, received and paid for by the corporation subsequent to February 29, 1920, shall not be entered in the Federal accounts in any manner.

5. Other accounts transferred

(a) In addition to the asset accounts above specified, there shall be likewise transferred to the corporate books other asset accounts of the Federal administration, similar to those sundry asset accounts which were taken over on the Federal books in the separation of accounts at the beginning of Federal control or subsequent thereto. The items here referred to are such as: Insurance premiums paid in advance, taxes paid in advance. Additional items of miscellaneous assets (for example, material loaned or leased), or liabilities, should be similarly transferred as may be mutually agreed upon.

Subsequent to February 29, 1920, cash vouchers should not be made for reimbursement of working funds expended during February, 1920, and previous months, but if such expenditures are approved the amounts thereof shall, on the Federal books, be charged to the appropriate accounts and credited to the working-fund account. It is suggested that the corporation take over the balance of cash in working funds by paying the aggregate amount thereof into the Federal cash.

Hospital and other funds for which the railroad is custodian shall be disposed of in accordance with General Order No. 68.

If during the period of Federal operations amounts representing overcharge freight claims paid out of Federal funds, affecting traffic, the revenues from which were included in corporation revenue or credited to it as lap-over revenue on the Federal books, or amounts representing loss and damage claims paid out of Federal funds chargeable to the period prior to Federal control, were carried on the Federal books in suspense accounts pending adjustment thereof with other carrier corporations, or pending receipt of additional information wherewith to dispose of the amounts carried, and such amounts are carried in suspense account as of February 29, 1920, they shall be charged to the corporation. Such amounts shall on the Federal books be charged to the account "(Name of corporation)—Corporate transactions" and on the corporate books should

be charged to an appropriate suspense account and credited to the account "U. S. Government—Corporate transactions."

(b) The value of mileage scrip introduced during Federal control, sold on or prior to February 29, 1920, and honored subsequently, shall be credited on the Federal books to the account "(Name of corporation)—Federal mileage scrip," and entry should be made on the corporate books charging "U. S. Government—Federal mileage scrip." Such scrip collection should not be destroyed until the account has been audited by administration accountants, or unless permission is obtained from the comptroller of the Railroad Administration. If in the establishment of accounts at the beginning of Federal control the mileage liability on the corporate books was made subject to an equitable adjustment when it appeared that no further mileage would be presented, a similar arrangement will be made as to the balance on the Federal books as of February 29, 1920.

6. Allocation of revenues and expenses

(a) Railway operating revenues and taxes shall be allocated to the period of Federal and corporate operations in accordance with the provisions of the standard agreement.

(b) Railway operating expenses, reparation and other claims, hire of equipment and joint facility rents, and any other accounts (except as provided in par. (a)), which constitute the basis of the standard return, shall be allocated with reference to the time when incurred as between the period of Federal control and the period prior and subsequent thereto.

7. Recording Federal control transactions and lap-over revenues and expenses

(a) There shall be entered currently after February 29, 1920, upon the Federal books referred to in section 1 hereof record of all transactions arising out of Federal control.

(b) Bills for accounts collectible and vouchers for accounts payable covering all transactions arising out of Federal operations shall be prepared, respectively, on United States Railroad Administration bill and voucher forms, recorded in the appropriate Federal bill and voucher registers, and charged or credited on the Federal books to the appropriate accounts.

(c) It is desired that transactions arising out of Federal control should not be entered in the corporate books in any manner; likewise it is desired that corporate transactions should not be included in the Federal accounts. However, it may be necessary in exceptional cases, as in the case of interline freight and passenger transactions, to include Federal transactions in the corporate accounts or corporate transactions in the Federal accounts. In such cases the amounts due to or from the Federal management should be credited on the corporate books to a deferred liability account styled "U. S. Government—Federal assets collected" or debited to a deferred

asset account styled "U. S. Government—Federal liabilities paid," as may be appropriate. In the Federal books such amounts shall be included, as may be appropriate, in a deferred liability account styled "(Name of corporation)—Federal liabilities paid" or in a deferred asset account styled "(Name of corporation)—Federal assets collected."

The net amount of cash realized or paid in settlement of lap-over revenues and expenses of the Federal period should be ascertained and appropriate cash settlement made monthly. The amounts thereof shall be entered on the Federal cashbooks and shall be debited or credited as may be appropriate to the accounts "(Name of corporation)—Federal assets collected" or "(Name of corporation)—Federal liabilities paid." Corresponding contra-entries should be made on the corporate books.

(d) If Federal revenue and expense items are reported and included in the revenue or expense accounts stated on the corporate books, as in the case of interline freight accounts, such amounts shall be accumulated in monthly totals from the corporate book records and accounted for as follows:

The total credit to the Federal income accounts should be charged on the corporate books to the appropriate primary revenue accounts and credited to the Federal management through the account "U. S. Government—Federal assets collected."

On the Federal books the same amounts shall be charged to the corporation through the account "(Name of corporation)—Federal assets collected" and credited to the appropriate primary revenue account.

The total debit to the Federal income accounts should be credited on the corporate books to the appropriate expense or other accounts and charged to the Federal management through the account "U. S. Government—Federal lilabilities paid."

On the Federal books the same amounts shall be credited to the corporation through the account "(Name of corporation)—Federal liabilities paid" and charged to the primary operating expenses or other accounts.

(e) In order to preserve the continuity of the income accounts and statistics of carriers, that such income accounts and statistics may be complete, and that there shall not be omitted therefrom amounts which would have been included in the appropriate accounts had there been no Federal control of railroads, at the end of each audit month, the total of the amounts, appearing on the Federal books, charged and credited to the accounts forming the basis upon which the standard return was determined, should be charged and credited on the corporate books to the appropriate primary revenue, expense or income accounts and debited or credited to subaccounts of Income Accounts Nos. 519 and 551, as the case may be, styled "Revenues Federal" or "Expenses Federal," as may be appropriate. No corresponding adjusting entry shall be made on the Federal books of the

individual carriers. Such an entry will be made in Washington based on the aggregate totals of the monthly reports made in response to the provisions of Accounting Circular No. 82.

8. Monthly and quarterly reports

Monthly and quarterly reports in accordance with provisions of Accounting Circulars Nos. 55 and 82 shall be rendered until the accounts on the Federal books are completely liquidated or adjusted, or until otherwise ordered.

The balances on the Federal books in all accounts prefixed with the name of the corporation authorized by this order shall be closed monthly to "Administration ledger control account" in accordance with Accounting Circular No. 82 and, except as to the account "(Name of corporation)—Federal material and supplies, February 29, 1920," shall be reported on Form AC–510 in accordance with Accounting Circular No. 55.

9. General

Where the property was taken over for Federal operation at a date subsequent to December 31, 1917, the date as of which such property was taken over should be substituted for December 31, 1917, wherever mentioned in this order.

The foregoing instructions shall not apply as to those lines of railroads in the United States under Federal operation at midnight February 29, 1920, that are operated thereafter as parts of a common carrier system or systems in countries adjacent to the United States, and whose treasurer and accounting officer and general accounts are located in those countries. In such cases special instructions will be given by the Comptroller.

Inquiries as to the interpretation and application of the provisions of this order and the procedure to be observed under the requirements shall be addressed to Mr. Geo. H. Parker, Comptroller.

WALKER D. HINES,
*Director General of Railroads.*

UNITED STATES RAILROAD ADMINISTRATION,
*Washington, June 11, 1920.*

GENERAL ORDER NO. 66–A

Paragraph (e) of section 7 of General Order No. 66 is hereby cancelled.

JOHN BARTON PAYNE,
*Director General of Railroads.*

Contract Custodian's No. 1090.

*Agreement between the Director General of Railroads and the Baltimore and Ohio Railroad Company and other corporations. June 24, 1919*

PREAMBLE AND RECITALS

This agreement, made this 24th day of June, 1919, between Walker D. Hines, Director General of Railroads, hereinafter called the Director General, acting on behalf of the United States and the President, under the powers conferred by the proclamations of the President hereinafter referred to, party of the first part, and the Baltimore and Ohio Railroad Company, a corporation of the State of Maryland; the Staten Island Rapid Transit Railway Company, a corporation of the State of New York; the Sandy Valley and Elkhorn Railway Company, a corporation of the State of Kentucky; the Baltimore and Ohio Chicago Terminal Railroad Company, a corporation of the State of Illinois; Coal and Coke Railway Company, a corporation of the State of West Virginia; and the Long Fork Railway Company, a corporation of the State of Kentucky, parties of the second part:

Witnesseth that—

(a) Whereas by a proclamation dated December 26, 1917, the President, acting under the powers conferred on him by the Constitution and laws of the United States, by the joint resolutions of the Senate and House of Representatives bearing date April 6 and December 7, 1917, respectively, and particularly under the powers conferred by section 1 of the act of Congress approved August 29, 1916, entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1917, and for other purposes," took possession and assumed control at 12 o'clock noon on December 28, 1917, of certain railroads and systems of transportation, including the railroads and transportation systems of the companies and the appurtenances thereof, and directed that the possession, control, operation, and utilization of the transportation systems thus taken should be exercised by and through William G. McAdoo, appointed Director General of Railroads; and

(b) Whereas the Congress of the United States, by an act approved March 21, 1918, hereinafter called the Federal control act, has authorized the President to enter into agreements with the companies owning the railroads and systems thus taken over for the maintenance and upkeep of the same during the period of Federal control, for the determination of the rights and obligations of the parties to the agreement arising from or out of Federal control, including the compensation to be received or guaranteed, and for other purposes, as in said act more fully set out, and authorized the President to exercise any of the powers by said act or theretofore granted him with relation to Federal control through such agencies as he might determine; and

(c) Whereas by a proclamation dated March 29, 1918, the President, acting under the Federal control act and all other powers him thereto enabling, authorized the director general, either personally or through such divisions, agencies, or persons as he may appoint, and in his own name or in the name of such divisions, agencies, or persons, or in the name of the President, to agree with the carriers, or any of them, or with any other person in interest, upon the amount of compensation to be paid pursuant to law, and to sign, seal, and deliver in his own name or in the name of the President or in the name of the United States such agreements as may be necessary and expedient with the several carriers or other persons in interest respecting compensation, or any other matter concerning which it may be necessary or expedient to deal, and to make any and all contracts, agreements, or obligations necessary or expedient and to issue any and all orders which may in any way be found necessary and expedient in connection with the Federal control of systems of transportation, railroads, and inland waterways as fully in all respects as the President is authorized to do, and generally to do and perform all and singular the acts and things and to exercise all and singular the powers and duties which in and by the said act, or any other act in relation to the subject thereof, the President is authorized to do and perform; and

(d) Whereas the said William G. McAdoo has resigned as Director General of Railroads and by a proclamation dated January 10, 1919, the President appointed Walker D. Hines Director General of Railroads and authorized him, either personally or through such divisions, agencies, or persons as he may appoint, in his own name or in the name of such divisions, agencies, or persons or in the name of the President, to agree with the carriers or any of them or with any other person in interest, upon the amount of compensation to be paid pursuant to law, and to sign, seal, and deliver in his own name or in the name of the President, or in the name of the United States of America such agreements as may be necessary and expedient with the carriers or other persons in interest respecting compensation, or any other matter concerning which it may be necessary or expedient to deal, and to make any and all contracts, agreements, or obligations necessary or expedient, and to issue any and all orders which may in any way be found necessary and expedient in connection with the Federal control of the systems of transportation taken over by the proclamation of December 26, 1917, as fully in all respects as the President is authorized to do, and generally to do and perform all and singular all the acts and things and to exercise all and singular the powers and duties in relation to such Federal control that the President is by law empowered to do and perform; and

(e) Whereas the Interstate Commerce Commission has certified to the President the amount of the average annual railway operating incomes of the said companies, computed in the manner provided in section 1 of the Federal control act, and the aggregate of which

amounts is twenty-seven million eight hundred and ninety-eight thousand one hundred sixty-one dollars and fourteen cents ($27,898,161.14), subject to such changes and corrections as the commission may hereafter determine and certify to be requisite in order that the accounts and reports of the companies used by the commission as the basis of computing said average annual railway operating incomes may be brought into conformity with the accounting rules or regulations of the commission in force at the time of such accounting, or in order to correct computations based on such accounts or reports; and

(f) Whereas the director general has found that the condition of the company during the test period was so exceptional as to make its standard return plainly inequitable as a fair measure of just compensation and has agreed with the company that the director general shall pay to the company as additional compensation, for the year 1918, the sum of two million one hundred and thirty-two thousand eight hundred and forty-eight dollars ($2,132,848.00), and thereafter two million one hundred and thirty-six thousand nine hundred and thirty-two dollars ($2,136,932.00) during each year, and pro rata for each fractional part of a year of Federal control.

Now, therefore, the parties hereto, of the first and second parts, respectively, each in consideration of the agreements of the other herein contained, do hereby covenant and agree to and with each other as follows:

SECTION 1.—PRIVITY, ALTERATIONS, DEFINITIONS, ETC.

SEC. 1. (a) This agreement shall be binding upon the United States, the Director General and his successors, and upon the companies, and their respective successors and assigns.

Wherever in this agreement the word "company" is used, it shall be understood as meaning the Baltimore and Ohio Railroad Company; the words "affiliated companies" shall be understood as meaning the five other corporations, parties, to this agreement; and the word "companies" shall be understood as meaning the six corporations, parties to this agreement.

The rights and obligations of the companies in this agreement contained are several, not joint. The company owns all the stock, except directors' qualifying shares, of all the affiliated companies.

This agreement shall not be construed as creating any right, claim, privilege, or benefit against any party hereto in favor of any State or any subdivision thereof, or of any individual or corporation other than the parties hereto.

(b) The provisions of this agreement may be altered, amended, or added to by and only by mutual consent signified by instruments in writing signed by the Director General and by some officer of the company thereto duly authorized by the board of directors of the company.

(c) Wherever in this agreement the word "commission" is used it shall be understood as meaning the Interstate Commerce Commission, acting by divisions or otherwise as authorized by law; but any party shall have the right to have the decision of any division reviewed by the commission sitting as a whole.

(d) Wherever in this agreement the words "Federal control" are used to indicate a period of time, they shall be understood as meaning the period from 12 o'clock midnight of December 31, 1917, to and including the day and hour on which said control shall cease.

(e) Wherever in this agreement the words "test period" are used, they shall be understood as meaning the period between July 1, 1914, and June 30, 1917, both inclusive.

(f) Wherever in this agreement the words "standard return" are used, they shall be understood as meaning average annual railway operating income, computed in the manner provided in section 1 of the Federal control act, and ascertained and certified by the commission.

(g) Wherever in this agreement the words "Director General" are used, they shall be understood as designating the person who has been or may from time to time be appointed by the President to exercise the powers conferred on him by law with relation to Federal control, or such agents or agencies as the Director General may from time to time appoint for the purpose; and wherever by this agreement any notice is to be given by the Director General, the same may be given in his name by any subordinate thereto duly authorized.

(h) Wherever the property of any of the companies is referred to in this agreement it shall be understood as including all the property of that company described in paragraph (a) of section 2 hereof, whether owned by or leased to it, and, where the context permits, all additions or betterments thereto or extensions thereof made during Federal control; and as to all such leased property the companies shall have the benefit of and be subject to all the obligations and provisions of this agreement and shall be subject to all duties imposed by law in respect of such leased property.

(i) The descriptive words at the heads of the several sections of this agreement and the table of contents are inserted for convenience merely, and are not to be used in the construction of the agreement.

SECTION 2.—PROPERTY TAKEN OVER

SEC. 2. The railroads and systems of transportation of the company and of its said affiliated companies of which the President has taken over possession, use, control, and operation shall be considered as including:

(a) The following roads and properties:

1. The railroad of the Baltimore and Ohio Railroad Company extending from Philadelphia, Pennsylvania, via Baltimore, Maryland, Washington, District of Columbia, Cumberland, Maryland, Pittsburgh, Pennsylvania, Akron, Ohio, to Chicago, Illinois, and from

Cumberland, Maryland, via Grafton, West Virginia, Wheeling, West Virginia, Newark, Ohio, Willard, Ohio, to Sandusky, Ohio; and from Grafton, West Virginia, via Clarksburg, West Virginia, Parkersburg, West Virginia, Cincinnati, Ohio, to East St. Louis, Illinois; and from Relay, Maryland, to Frederick and Washington Junction, Maryland; and from Weverton to Hagerstown, Maryland; and from Harpers Ferry, West Virginia, to Strasburg, Virginia, and Harrisonburg to Lexington, Virginia; and from Hancock to Berkeley Springs, West Virginia, and Green Spring to Petersburg, West Virginia; and from Garrett to Berlin, Pennsylvania, Rockwood to Johnstown, Pennsylvania, Broadford to Mt. Pleasant, Pennsylvania, and Confluence, Pennsylvania, to Kendall, Maryland; and from Connellsville, Pennsylvania, via Fairmont and Clarksburg, West Virginia, to Weston, Pickens, Sutton and Richmond, West Virginia; and from Grafton, West Virginia, to Belington and Buckhannon, West Virginia; and from Pittsburgh, Pennsylvania, via Wheeling, West Virginia, to Parkersburg, Spencer, Ripley and Kenova, West Virginia; and from Clarksburg to New Martinsville, West Virginia; and from Callery, Pennsylvania, to Mt. Jewett, Pennsylvania, and New Castle Junction to New Castle, Pennsylvania; and from De Forest Junction, Ohio, to Fairport, Ohio, and Valley Junction, Ohio, to Cleveland, Ohio; and from Bridgeport, Ohio, to Lorain and Cleveland, Ohio; and from Belpre to Zanesville, Ohio; Hamden to Portsmouth, Ohio, Blanchester to Hillsboro, Ohio, Lodi to Millersburg, Ohio, Newark to Shawnee, Ohio, Lore City to Cumberland, Ohio, Newark, via Columbus to Midland City, Ohio, and from Sayre to San Toy, Ohio; and from North Vernon, Indiana, to Jeffersonville and New Albany, Indiana, and Louisville, Kentucky; and from Beardstown to Shawneetown, Illinois; and from Cincinnati, Ohio, to Toledo, Ohio, Dayton to Berlin, Ohio, Hamilton to Middletown, Ohio, Troy to Piqua, Ohio, Deshler to West Findlay, Ohio, and North Baltimore to Tontogany, Ohio; and from Arthur Kill Bridge, New Jersey, to Cranford Junction, New Jersey; together with Terminals in the city of New York, New York.

2. The railroad of the Staten Island Rapid Transit Railway Company extending from Arthur Kill Bridge, New Jersey, to South Beach and Tottenville, Staten Island, New York.

3. The railroad of the Sandy Valley and Elkhorn Railway Company extending from Shelby Junction to Jenkins, Kentucky.

4. The railroad and terminal facilities of the Baltimore and Ohio Chicago Terminal Railroad Company in and around Chicago, Illinois, and including lines extending to Chicago Heights, Illinois, and Pine Junction, Indiana.

5. The railroad of the Coal and Coke Railway Company extending from Elkins, West Virginia, to Charleston, West Virginia.

6. The railroad of the Long Fork Railway Company extending from Martin to Weeksbury, Kentucky.

Together with all branches and tracks, trackage, bridge, and terminal rights, and lines of railroad owned by or leased to and oper-

ated by any of the companies as a part of their systems of transportation, including all floating equipment, docks, wharves, warehouses, and water front property, and all other property of the companies, with the appurtenances thereof, whether included in the foregoing list or not, the revenues of which were used, or which, if the property had been then owned by or leased to any of the companies and had then been revenue bearing, would have been used, in computing its standard return.

Each of the companies reserves to itself the benefit of all leases (and of all rents and revenues accruing therefrom) of parts of its right of way, station, grounds, docks, wharves, warehouses, and water-front property, and other property, the revenues from which under the accounting rules of the commission in force during the test period were properly creditable to "miscellaneous rent income" or "miscellaneous income." Each of the companies grants to the director general all its rights to terminate leases of any part of its right of way, yards, or station grounds, docks, wharves, warehouses, and water-front property, and to occupy and use the premises of any such lessee when, in his judgment, the same is required for operating purposes. Each of the companies shall have for its own benefit the right to lease for industrial sites or other purposes such portion of its right of way, yards, or station grounds, docks, wharves, warehouses, and water-front property, or structures thereon as are not required by the director general for operating purposes, and to receive and enjoy the rentals therefrom, subject to the right of the director general to cancel any such lease and to occupy the premises or structures whenever, in his judgment, the same are nuecessary for operating purposes. All expenses connected with any such property heretofore or hereafter leased or otherwise occupied, as in this paragraph provided, including taxes thereon which during the test period were not charged to railway tax accruals, shall be paid by the companies while receiving the revenues therefrom.

(b) All materials and supplies on hand at midnight December 31, 1917.

(c) All balances in the account or accounts representing the total of "Net balance receivable from agents and conductors" as of midnight December 31, 1917.

(d) The cash in the company's treasury on December 31, 1917, belonging to the Baltimore and Ohio Railroad Employes' Relief Department—relief feature, amounting to $596,463.07; and to the Baltimore and Ohio Railroad Relief Department—savings feature, amounting to $2,836,583.90.

SECTION 3.—ACCEPTANCE

SEC. 3. (a) The companies accept all the terms and conditions of the Federal control act and any regulation or order made by or through the President under authority of said act or of that portion of the act approved August 29, 1916, referred to in paragraph (a)

of the preamble to this agreement which authorizes the President in time of war to take possession, assume control, and utilize systems of transportation; and they further and expressly accept the covenants and obligations of the director general in this agreement set out and the rights arising thereunder in full adjustment, settlement, satisfaction, and discharge of any and all claims and rights, at law or in equity, which they or any of them now have or hereafter can have, otherwise than under this agreement, against the United States, the President, the director general, or any agent or agency thereof, for compensation under the Constitution and laws of the United States for the taking possession of their property, and for the use, control, and operation thereof during Federal control, and for any and all loss and damage to their business or traffic by reason of the diverson thereof or otherwise which has been or may be caused by said taking or by said possession, use, control, and operation.

No claim is made by the companies for compensation for the period between noon of December 28 and midnight of December 31, 1917; and the revenues of said period shall belong to the companies, and the expenses thereof shall be paid by them, allocated in both cases as provided in paragraph (b) of section 4 hereof.

(b) The companies, on their own initiative or upon the request of the director general, shall take all appropriate and necessary corporate action to carry out the obligations assumed by them in this agreement or lawfully imposed upon them by or pursuant to the proclamation of December 26, 1917, or by the Federal control act.

(c) The Federal control act being in section 16 thereof expressly declared to be emergency legislation enacted to meet conditions growing out of war, nothing in this agreement shall be construed as expressing or prejudicing the future policy of the Federal Government concerning the ownership, control, or regulation of the companies, or the method or basis of the capitalization thereof, and the recitals or provisions of this agreement shall not be used, as evidence or otherwise, by or against any party hereto in any pending or future proceeding which involves the acquisition or valuation of the property of any of the companies or any part thereof; but nothing in this paragraph shall be taken or construed as affecting the settlement and discharge contained in paragraph (a) of this section, nor as limiting or qualifying any of the provisions of said paragraph for the purposes thereof, nor as limiting the use of this agreement as evidence in any proceeding under this agreement or under the Federal control act.

SECTION 4.—OPERATION AND ACCOUNTING DURING FEDERAL CONTROL

SEC. 4. (a) All amounts received by the director general under paragraph (c) of section 2 hereof and all other amounts whether received from the companies in cash or collected or realized upon by him from current operating assets belonging to the companies or

arising from railway operations prior to midnight of December 31, 1917, shall be credited by him to the companies; and the director general shall, to the extent of the cash so received or realized, pay and charge to the companies all expenses arising out of railway operations prior to January 1, 1918, including reparation claims, and, unless objected to by the company, may pay and charge to the companies any of such expenses, including reparation claims, in excess of the cash so received or realized. Balances of the above accounts shall be struck quarterly on the last days of March, June, September, and December of each year, and the cash balance found on such adjustments to be due either party shall be then payable and, if not paid, shall bear interest at the rate of 6 per cent per annum, unless the parties shall agree upon a different rate; except that the rate of interest on any portion of a balance found due to the companies which is derived from cash in bank to the credit of the companies on interest, shall be adjusted in each case independently of this contract as the parties may agree.

(b) Railway operating expenses, reparation, and other claims, hire of equipment, and joint facility rents shall be allocated with reference to the time when incurred as between the period prior and subsequent to midnight of December 31, 1917, and as between the period of Federal control and the period subsequent thereto. Railway operating revenues shall be allocated as between the period prior and subsequent to midnight of December 31, 1917, in accordance with the established accrual practices of the companies; except that where prior to midnight of December 31, 1917, the companies' part of a service on through business had been completed or carload lots on their own lines had reached destination, the revenue of the companies for such service shall be allocated to them; but as to classes of traffic wherein the opinion of the director general such allocation will involve undue delay or undue absorption of accounting labor, such revenues shall be allocated in accordance with the established accrual practices of the companies. Like methods of accruing and allocating such revenues shall be used at the end of Federal control.

(c) All expenditures made by the director general during Federal control for additions and betterments, exclusive of equipment, or for extensions begun prior to January 1, 1918, shall be charged to the companies, and if the completion of any such addition, betterment, or extension is approved or ordered by the director general, the company shall be entitled under the provisions of paragraph (d) of section 7 hereof to interest on the cost thereof from the completion of the work; but no interest (except to the extent that the same may be allowed and included in the compensation provided for in paragraph (a) of section 7 hereof) shall be due the company upon any such expenditures for work done prior to January 1, 1918. Payments for all equipment ordered or under construction by any of the companies prior to January 1, 1918, but delivered on or after that date, shall also be considered as expenditures made by order or approval of the director general under paragraph (d) of section 7

hereof. Interest during construction payable under this paragraph, and also interest during construction on the cost of any additions, betterments, and road extensions made by the companies or at their expense to the companies' property during Federal control, shall be included in the cost of the work.

(d) Cash receipts or disbursements and other items arising out of transactions which do not enter into or form a part of those used in determining the companies' standard return shall not be received or paid by the director general unless such transactions are negotiated or conducted by his order for account of the companies and with the consent of the company. When moneys are so received or paid by the director general in connection with such corporate transactions they shall be credited or charged to the companies. There shall be an accounting of the amounts due by or to any of the parties under this paragraph at the end of each quarter year of Federal control, and the amount so found due shall be then payable, and if not paid shall bear interest as provided in paragraph (a) of this section.

(e) Any funds taken over as provided in paragraph (d) of section 2 hereof shall be maintained by payments and charges to appropriate operating expense accounts and used by the director general during Federal control substantially in the same manner as prior to January 1, 1918. All sums paid by the director general to maintain pension funds or pension obligations or practices, and all contributions to Young Men's Christian Associations of employees, employees' savings funds, relief funds or associations, reading rooms, or health, accident, or death benefits for employees, shall be treated as a part of railway operating expenses during Federal control.

(f) All salaries and expenditures incurred by the companies during Federal control for purposes which relate to the existence and maintenance of the corporations, or to the properties of the companies not taken over by the President, or to negotiations, contracts, valuations, or any business controversy with the Government or any branch thereof, and which are not specially authorized by the director general, shall be borne by the companies; except that the expenses of valuation now being made by the commission to the extent that they are, in the opinion of the director general, necessary to comply with the valuation orders and other requirements of the commission and to the cooperation of the companies in the making of such valuation, shall be paid by the director general as a part of railway operating expenses. If the company is dissatisfied with the ruling of the director general it may appeal to the commission, whose decision shall be final.

(g) The director general shall furnish for additions, betterments, and road extensions to the companies' property approved or ordered by him any of the materials and supplies taken over under paragraph (b) of section 2 hereof, or purchased by him and held for use in connection with the companies' property, in so far as, in his judgment, he can do so with due regard to his own requirements. Materials and supplies so furnished shall be charged to the companies at cost.

(h) The director general shall at his option be substituted for the period of Federal control in the place of the companies in respect of the benefits and obligations of contracts relating to operation in force January 1, 1918 (including contracts made by subsidiaries for the use and benefit of the companies and the right to abrogate or change and make new contracts with express companies for the period of Federal control), except as to contracts between the companies and subsidiary companies which shall be considered and treated as arrangements or practices; and the director general shall in like manner at his option be substituted for such period in respect of the benefits and obligations of arrangements and practices in force during the test period in regard to fuel, materials, and supplies for the operation of the property described in paragraph (a) of section 2 hereof and of any additions, betterments, and road extensions thereto, obtained from any mine, oil field, or other source of supply owned or controlled by the companies, it being understood that under such arrangements or practices, if availed of by the director general, he shall, to the extent necessary to offset any increase in the standard return growing out of the furnishing by the companies or their subsidiaries, during the test period, of fuel, materials, and supplies under an arrangement or practice at less than the then cost or the then market value thereof for railroad purposes, be charged for such fuel, materials, and supplies a price expressed in dollars or cents per unit below or above the then cost or the then market value thereof for railroad purposes (as the practice of the companies may be been) in the same amount that the prices charged the companies during the test period were below or above the then cost or the then market value thereof for railroad purposes; and at the request of the director general or the companies the prices for fuel or materials supplied between December 31, 1917, and the execution of this contract shall be adjusted on the foregoing basis: *Provided, however*, That a source of supply which the companies had acquired to safeguard their own operations shall not be depleted or reduced for use on other transportation systems, except in cases of emergency to be determined by the director general, in which event the quantity so used on other transportation systems shall be accounted for to the companies at their fair value thereof: *And provided further*, That materials and supplies secured under contracts which the companies had made for their own operations shall, so far as practicable, be used on the companies' property, and that, if used on any other transportation system, materials and supplies of like character shall be furnished by the director general for use in making such additions, betterments, and road extensions as shall be chargeable to the companies, and shall be charged at cost under such contracts.

(i) The director general shall pay, or save the companies harmless from, all expenses incident to or growing out of the possession, operation, and use of the property taken over during Federal control, except the expenses which under this agreement are to be borne by the companies. He shall also pay or save the companies harmless

from all rents called in the monthly reports to the commission equipment rents or joint-facility rents, and all judgments or decrees that may be recovered or issued against, and all fines and penalties that may be imposed upon the companies by reason of any cause of action arising out of Federal control, or of anything done or omitted in the possession, operation, use, or control of the companies' property during Federal control, except judgments or decrees founded on obligations of the companies to the director general or the United States.

(j) Except as otherwise provided in this agreement, the director general shall save the companies harmless from any and all liability, loss, or expense resulting from or incident to any claim made against the companies growing out of anything done or omitted during Federal control in connection with or incident to operation or existing contracts relating to operation; and shall do and perform, so far as is requisite under Federal control for the protection of the companies, all and singular the things, of which he may have notice, necessary and appropriate to prevent, because of Federal control or of anything done or omitted thereunder, the forfeiture or loss by the companies of any of their property rights, ordinance rights, or franchises, or of their trackage, lease, terminal, or other contracts involving a facility of operation; but nothing herein contained shall be construed to require the director general to make any capital expenditure necessary to preserve a franchise or ordinance right not heretofore availed of by the companies. The director general shall also save the companies harmless from any and all claims for breach of covenant heretofore entered into by the companies or by any predecessor in title or interest in any mortgage or other instrument in respect to insurance against losses by fire.

Nothing in this or in the preceding paragraph shall be construed to be an assumption by the director general of or to make him liable on any obligation of the companies to pay a debt secured by a mortgage or any rent under a lease, except rents which during the test period were called in the monthly reports to the commission equipment rents and joint-facility rents and rents which under the accounting rules of the commission in force during the test period were classified as operating expenses; or to make the director general liable to the company in respect of any interest on any bonds issued by or in respect of any obligations of other corporations, or in respect of contributions to make up deficits in the earnings of other corporations, except as payments in respect of such interest or other amounts were classified under said rules as equipment or joint-facility rents, or were a class of payments to be otherwise reflected in railway operating income.

The companies shall, during Federal control, pay the rents of any property held by them under lease or contract, described in paragraph (a) of section 2 hereof, except the rents which during the test period were under the rules of the commission classified as equipment rents or joint-facility rents and rents which were classified as oper-

ating expenses, which excepted rents shall be paid by the director general. If the lease of or right to use any property described in paragraph (a) of said section 2 expires during Federal control, the companies shall, if possible, and if requested by the director general, renew the same; the rental, however, of property in the excepted classes above mentioned shall be paid by the director general. The companies shall pay the same amount of rent as was payable at the beginning of Federal control for other property, the lease of or right to use which is renewed at the request of the director general, but any increases in the rental of such other property shall be paid by the director general.

(k) In carrying out the provisions of paragraphs (a), (b), (c), and (d) of this section and the provisions of section 6 hereof the director general shall not settle any claim by or against the companies against the objection in writing of the president or of any other duly authorized officer of the company. The conduct of all litigation before any court or commission arising out of such disputed claims, or out of operation prior to Federal control, shall be in charge of the director general's legal force and the expense thereof shall be paid by the director general; but the companies may at their own expense employ special counsel in connection with any such litigation.

(l) Nothing in this agreement shall be construed as inconsistent with the provision in section 10 of the Federal control act that no process, mesne or final, shall be levied against any property under Federal control, nor as a waiver by the United States of any claim that might otherwise be made by it that the rights of any State or subdivision thereof or of any individual or corporation have been abrogated or suspended by the taking over of the companies' property or by Federal control.

(m) The companies shall have the right at all reasonable times to inspect the books and accounts kept by the director general relating to their property, or to the operation thereof, and the director general shall during Federal control furnish the companies with copies of the operating reports relating to their property, and as soon as parcticable after the end of each fiscal year shall furnish to the companies a complete list of their equipment as of the end of such fiscal year.

SECTION 5.—UPKEEP

SEC. 5. (a) During the period of Federal control the Director General shall, annually, as nearly as practicable, expend and charge to railway operating expenses, either in payments for labor and material or by payments into funds, such sums for the maintenance, repair, renewal, retirement and depreciation of the property described in paragraph (a) of section 2 hereof as may be requisite in order that such property may be returned to the companies at the end of Federal control in substantially as good repair and in substan-

tially as complete equipment as it was on January 1, 1918: Provided, however, That the annual expenditure and charges for such purposes during the period of Federal control on such property and the fair distribution thereof over the same, or the payment into funds, of an amount equal in the aggregate (subject to the adjustments provided in paragraph (c) and to the provisions of paragraph (e) of this section) to the average annual expenditure and charges for such purposes included under the accounting rules of the commission in railway operating expenses during the test period, less the cost of fire insurance included therein, shall be taken as a full compliance with the foregoing covenant.

(b) The Director General may expend such sums, if any, in addition to those expended and charged under paragraph (a) of this section (subject to the adjustments provided in paragraph (c) of this section) as may be requisite for the safe operation of the property described in paragraph (a) of section 2 hereof, assuming a use similar to the use during the test period and not substantially enhancing the cost of maintenance over the normal standard of maintenance of railroads of like character and business during said period; and the amount, if any, of such excess expenditures during Federal control shall be made good by the companies as provided in paragraph (b) of section 7 hereof.

(c) In comparing the amounts expended and charged under the provisions of paragraphs (a) and (b) of this section with the amounts expended and charged during the test period, due allowance shall be made for any difference that may exist between the cost of labor and materials and between the amount of property taken over and the average for the test period, and, as to paragraph (a), for any difference in use between that of the test period and during Federal control which in the opinion of the commission is substantial enough to be considered, so that the result shall be, as nearly as practicable, the same relative amount, character, and durability of physical reparation.

(d) At the request of the Director General or the company there shall be an accounting of the amounts due by or to any of the parties under paragraphs (a) and (b) of this section at the end of each year of Federal control and at the end of Federal control.

(e) If during Federal control any of the property described in paragraph (a) of section 2 hereof or any replacement thereof or addition thereto or betterment or extension thereof is destroyed or damaged otherwise than by fire or public enemies, and is not restored or replaced by the Director General, he shall reimburse the companies the value of the property destroyed or the amount of the damage at the time of the loss, and the cost of restoration or replacement, or said value or damage, as the case may be, shall be charged to annual railway operating expenses; it being understood that extraordinary losses caused by floods, explosions, train wrecks or accident are included in the matters covered by this paragraph, while

ordinary losses due to such causes are included in the matters covered by paragraph (a) of this section: Provided, however, That if the commission on application of the Director General or the company and after giving due consideration to the practice of the companies during the test period in respect to such matters and to any other pertinent facts and circumstances, determines that it is just and reasonable that the said cost or value shall be apportioned or extended over a period of more than one year, this shall be done, and so much of said cost or value as may be apportioned by the commission over the period subsequent to Federal control, shall be charged to the companies in the final accounting at the end of Federal control and shall be paid by them.

If, during Federal control, any of the property described in paragraph (a) of section 2 hereof or any replacement thereof or addition thereto or betterment or extension thereof is destroyed or damaged by fire, and is not restored or replaced by the Director General, he shall reimburse the companies the value of the property destroyed or the amount of the damage at the time of the fire; and the cost of restoration or replacement or said value or damage, as the case may be, shall be charged to annual railway operating expenses, but the same shall not be considered a charge to such expenses for the purposes specified in paragraph (a) of this section.

In case of any such loss or damage by fire, the Director General shall, if given written notice of the requirements of any mortgages, equipment lease, or trust on the property so destroyed or damaged, make such restoration or replacement, or pay such value or damage, in such way as to meet the requirements of such mortgage, equipment lease, or trust in the same manner as would have been proper in applying the proceeds of insurance on such property if it had been insured by the companies against loss or damage by fire in accordance with the terms of such instruments of lien; and a compliance with the written request of the company in respect thereof shall be a full acquittance of any obligation of the Director General in the premises.

The foregoing parts of this paragraph are subject to the proviso that in case of loss or damage any additions and betterments made in connection with or as a part of the restoration or replacement of property damaged or destroyed and chargeable under the accounting rules of the commission in force December 31, 1917, to investment in road and equipment, shall be charged to and paid by the companies.

The Director General shall not be liable to the companies for any loss or damage due to the acts of public enemies.

(f) If any additions, betterments, or road extensions are made to the property taken over or any equipment is added at the expense of the companies and with the approval or by order of the Director General during Federal control, he shall expend and charge to railway operating expenses such sums either in payments for labor and

materials or by payments into funds, as may be requisite for the proper maintenance, repair, renewal, retirement, and depreciation of such property until the end of Federal control.

(g) The companies shall have the right to inspect their property at all reasonable times during Federal control, and the Director General shall provide reasonable facilities for such inspection.

(h) If any question shall arise, either during or at the end of Federal control, as to whether the covenants or provisions in this section contained are being or have been observed, the matter in dispute shall, on the application of the Director General or the company, be referred to the commission, which, after hearing, shall make such findings and order as justice and right may require, which shall be final as to the questions submitted and shall be binding on and observed by the parties hereto, except that the Director General or the company may take any question of law to the courts, if he or it so desires.

SECTION 6—TAXES

SEC. 6. (a) All taxes assessed under Federal or any other governmental authority for the period prior to January 1, 1918, including a proportionate part of any such tax assessed after December 31, 1917, for a period which includes any part of 1917 or preceding years and unpaid on that date, all taxes commonly called war taxes which have been or may be assessed against the companies under the act of Congress entitled "An act to provide revenue to defray war expenses, and for other purposes," approved October 3, 1917, or under any act in addition thereto or in amendment thereof, and all taxes which have been or may be assessed on property under construction, and all assessments which have been or may be made for public improvements, chargeable under the accounting rules of the commission in force December 31, 1917, to investment in road and equipment, shall be paid by the companies; but upon the amount thus chargeable to investment interest shall be paid to the company during Federal control at the rate provided in paragraph (d) of section 7 hereof. Taxes assessed during construction on additions, betterments, and road extensions made by the companies with the approval or by order of the Director General during Federal control shall be considered a part of the cost of such additions, betterments, and extensions, and shall, under the provisions of paragraph (d) of section 7 hereof, bear interest as a part of such cost from the date of the completion of such additions, betterments, or extensions. Assessments for public improvements which do not become a part of the property taken over shall bear interest from the date of the payment of such assessment.

(b) If any tax or assessment which under this agreement is to be paid by the companies is not paid by them when due, the same may be paid by the Director General and deducted from the next installment of compensation due under section 7 hereof. If any taxes

properly chargeable to the Director General have been or shall be paid by the companies, they shall be duly reimbursed therefor.

(c) The Director General shall either pay out of revenues derived from railway operation during the period of Federal control or shall save the companies harmless from all taxes lawfully assessed under Federal or any other governmental authority for any part of said period on the property under such control, or on the right to operate as a carrier, or on the revenues derived from operation, and all other taxes which under the accounting rules of the commission in force December 31, 1917, are properly chargeable to "railway tax accruals," except the taxes and assessments for which provision is made in paragraph (a) of this section. The Director General shall pay or save the companies harmless from the expense of all suits respecting the classes of taxes payable by him under this agreement.

(d) If any such tax is for a period which began before January 1, 1918, or continues beyond the period of Federal control, such portion of such tax as may be apportionable to the period of Federal control shall be paid by the Director General, and the remainder shall be paid by the companies.

(e) Whenever a period for which a tax is assessed can not be definitely determined, so much of such tax as is payable in any calendar year shall be treated as assessed for such year.

SECTION 7.—COMPENSATION

SEC. 7. (a) The annual compensation guaranteed to the companies under section 1 of the Federal control act shall be the sum of thirty million, thirty-one thousand, nine dollars and fourteen cents ($30,031,009.14) during the year 1918, and thirty million, thirty-five thousand, ninety-three dollars and fourteen cents ($30,035,093.14) during each additional year, and pro rata for each fractional part of a year during Federal control, subject, however, to any increase or decrease in the standard return hereafter made by the commission as provided in paragraph (e) of the preamble of this agreement.

Compensation paid by the Director General under this agreement, including that provided for in paragraph (d) of this section, or arising from any other source, shall be paid to the company; and the company, after retaining such part thereof as it may be entitled to retain, shall distribute the remainder to the parties entitled thereto.

(b) The said compensation shall be paid to the company quarterly in equal installments on the last days of March, June, September, and December of each year for the quarter ending therewith, except that the first five installments shall be due as of March 31, 1918, June 30, 1918, September 30, 1918, December 31, 1918, and March 31, 1919, respectively, but shall be paid upon the execution of this agreement; but from each installment there may be deducted any amount

then due by the companies under paragraphs (a) and (d) of section 4 hereof, under paragraph (b) of section 5 hereof, and under paragraph (b) of section 6 hereof, and all amounts required to reimburse the United States for the cost of additions and betterments made to the property of the companies not justly chargeable to the United States, unless such matters are financed or otherwise taken care of by the companies to the satisfaction of the Director General, and the Director General may apportion any such amounts to two or more subsequent installments: Provided, however, That said power to deduct amounts due or accruing under paragraph (b) of section 5 hereof and the cost of additions and betterments not justly chargeable to the United States shall not be so exercised as to prevent the companies from paying out the sums reasonably required to support their corporate organizations, to keep up sinking funds for the companies' debts required by contracts in force December 31, 1917, to pay their taxes, to pay rents and other amounts (not chargeable to capital account) properly payable by the companies for leased or operated roads and properties, to pay interest which has heretofore been regularly paid by the companies, and interest on loans issued during Federal control and approved by the Director General, nor shall such deduction be made in respect of additions and betterments which are for war purposes and not for the normal development of the companies, nor in respect of road extensions, nor in respect of amounts due under paragraphs (a) and (d) of section 4 hereof, in cases where the current assets, including materials and supplies, of the companies taken over by the Director General under the provisions of this agreement clearly exceed the current liabilities of the companies paid or assumed by the Director General under said section. In the event of a difference as to the fact whether additions and betterments are for war purposes and not for the normal development of the companies, or as to whether an addition is a road extension, the question may, on application of the Director General or the company, be referred to and determined by the commission.

The power provided in this paragraph to deduct the amount due by the companies for the cost of additions and betterments not justly chargeable to the United States is further declared to be an emergency power, to be used by the director general only when he finds that no other reasonable means is provided by the companies to reimburse the United States, and as contemplated by the President's proclamation and by the Federal control act, it will be the policy of the director general to so use such power of deduction as not to interrupt unnecessarily the regular payment of dividends as made by the companies during the test period.

Overdue installments of compensation, or balances thereof, provided for in this section shall bear interest from maturity at the rate of five per cent per annum, except that if the director general shall, prior to the execution of this contract, have loaned the companies any money, then to the extent of the amount thus loaned, the

installments of compensation overdue at the date of the execution hereof shall bear interest from maturity at the same rate as that charged to the companies on such loans.

(c) During Federal control the companies shall not, without the prior approval of the director general, issue any bonds, notes, equipment trust certificates, stock, or other securities or enter into any contracts (except contracts in respect of corporate affairs and property not taken under Federal control), or agree to pay interest on their debts at a higher rate, or for rent of leased roads and properties a larger amount than the rates and amounts payable as of or required by contracts in force on December 31, 1917. The companies may, however, procure the authentication and delivery to them under any mortgage or trust deed or agreement in force December 31, 1917, of bonds or notes issuable thereunder in respect of additions, betterments, extensions, and equipment or for refunding purposes.

(d) Upon the cost of additions and betterments, less retirements in connection therewith, and upon the cost of road extensions made to the property of the companies during Federal control, the director general shall from the completion of the work pay the company a reasonable rate of interest, to be fixed by him on each occasion. In fixing such rate or rates he may take into account not merely the value of money but all pertinent facts and circumstances, whether the money used was derived from loans or otherwise, provided that to the extent that the money is advanced by the director general or is obtained by the companies from loans or from the proceeds of securities the rate or rates shall be the same as that charged by the director general for loans to the companies or to other companies of similar credit.

(e) From the compensation so received or from other income, if adequate for the purpose, the companies shall make all payments of interest, rents (other than the equipment rents, joint facility rents, and rents classified as operating expenses mentioned in paragraph (j) of section 4 hereof), and other sums necessary to prevent a default under any mortgage or lease of any of the property described in paragraph (a) of section 2 hereof; and if at any time during Federal control the companies, by virtue of any change in the right of possession (subject to the rights of the United States) to any of said property or otherwise, shall no longer be entitled as between themselves and any other person or corporation, not a party to this agreement, to receive the entire compensation herein provided, such compensation shall be apportioned and paid as between those entitled thereto, as justice and right may require.

SECTION 8.—CLAIMS FOR LOSSES ON ADDITIONS, ETC.

SEC. 8. (a) Prompt notice in writing, except as provided in paragraph (d) of this section, shall be given the companies of the making or ordering of any additions, betterments, or road extensions, in-

cluding terminals, motive power, cars, or other equipment to or for the property of the companies costing more than one thousand dollars, with an estimate of the cost thereof. Such notice shall be given before the beginning of the work or the acquisition of the property whenever in the judgment of the director general it is practicable to do so. Within a reasonable time after the completion of the work or the acquisition of the property, a written statement of the final cost thereof shall be given the companies. There shall be furnished the companies, as soon as practicable after the end of each month, a written statement of all expenditures estimated to cost one thousand dollars or less chargeable to investment in road and equipment made during the month, with a brief description of the work done or of the property acquired; and such statement shall constitute all the notice of additions and betterments costing one thousand dollars or less required by paragraphs (b) and (c) of this section. The notices provided in this paragraph may be given to the president of the company unless the company designates some other officer to receive the same, in which event the notice shall be given to such other officer.

(b) Any claim of the companies for loss accruing to them by reason of expenditures for additions and betterments made to their property during Federal control in connection with or as a part of the work of maintaining, repairing, and renewing the companies' property and chargeable under the accounting rules of the commission in force December 31, 1917, to investment in road and equipment, except such expenditures as are incurred in connection with the replacement of buildings and structures in new locations, may be determined by agreement between the director general and the companies, or, failing such agreement as to the fact or amount of such loss, the questions at issue may, upon the application of the director general or the companies at any time after the filing of the statement of claim hereinafter referred to, be ascertained in the manner provided in section 3 of the Federal control act: Provided, however, That no loss shall be claimed by the companies and no money shall be due them in respect of such additions and betterments upon the ground that the actual cost thereof at the time of construction was greater than under other market and commercial conditions; and for the purpose of determining such controversy the amount paid for any addition or betterment shall be deemed the fair and reasonable cost thereof and shall be taken as the basis for such determination, nor unless the companies, within sixty days of notice to them that the work will be done, shall give the director general notice of objection thereto and shall file with the director general a statement of claim within ninety days after notice of the completion of the work.

(c) Any claim of the companies for loss accruing to them by reason of any additions and betterments which are not made in con-

nection with or as a part of the work of maintaining, repairing, and renewing the companies' property, or accruing to them in connection with maintenance in the replacement of buildings and structures in new locations, or by reason of road extensions, terminals, motive power, cars, or other equipment made to or provided for the property of the companies during Federal control, may be determined by agreement between the director general and the companies, or, failing such agreement as to the fact or amount of such loss, may, by proceedings instituted not later than six months after the end of Federal control, be ascertained in the manner provided in section 3 of the Federal control act: Provided, however, That no loss shall be claimed by the companies and no money shall be due to them in respect of such additions, betterments, road extensions, terminals, motive power, cars, or other equipment mentioned in this paragraph upon the ground that the actual cost thereof at the time of construction or acquisition was greater than under other market and commercial conditions; and for the purpose of determining such controversy the amount paid for any additions, betterments, road extensions, terminals, motive power, cars, or other equipment shall be deemed the fair and reasonable cost thereof and shall be taken as the basis for such determination; nor unless within sixty days after notice to the company of such construction or acquisition written notice is given to the director general by the company that a loss will be claimed in respect thereof. With and as a part of such notice the company shall state the objections to such construction or acquisition as far as reasonably practicable at the time. Nothing in this agreement shall be construed as barring the United States from contending that no loss within the meaning of the Federal control act accrued to the companies by reason of any additions, betterments, or road extensions made during Federal control by order or approval of the director general, if it is made to appear that the companies themselves but for Federal control should in the exercise of sound judgment have made such addition, betterment, or road extension.

(d) Where additions, betterments, or road extensions or terminals, motive power, cars, or other equipment have been made to or provided for the property of the companies during Federal control but prior to the execution of this agreement, the director general shall not be required to give the notice thereof provided for in paragraph (a) of this section and notice by the company of any claim of loss in respect thereto may be given the director general within ninety days after the execution hereof; and such claims shall thereafter be proceeded with in the manner provided in paragraph (b) or paragraph (c) of this section, as the case may be.

(e) The director general shall reimburse the companies for the amount of loss ascertained under this section with a proper adjustment of interest thereon.

(f) The director general shall not acquire any motive power, cars, or other equipment at the expense, or on the credit, of the companies in excess of what in his judgment is necessary, in addition to their then existing equipment, to provide for the traffic requirements of their own systems of transportation; but this provision shall not prevent the director general, after the acquisition of such equipment, from using the same, or any part thereof, on the line of any other transportation system operated by him.

SECTION 9—FINAL ACCOUNTING

SEC. 9. (a) At the end of Federal control all the property described in paragraph (a) of section 2 hereof shall be returned to the companies, together with all repairs, renewals, additions, betterments, replacements, and road extensions thereto which have been made during Federal control, except as any part thereof may have been destroyed or retired and not replaced, in which case the provisions of section 5 hereof shall govern and except that the director general shall not be obliged to restore or replace property destroyed or damaged by the acts of public enemies.

(b) At the end of Federal control the director general shall return to the companies all uncollected accounts received by him from them and also materials and supplies equal in quantity, quality, and relative usefulness to that of the materials and supplies which he received, and to the extent that the director general does not return such materials and supplies he shall account for the same at prices prevailing at the end of Federal control. To the extent that the companies receive materials and supplies in excess of those delivered by them to the director general they shall account for the same at the prices prevailing at the end of Federal control and the balance shall be adjusted in cash.

(c) The total amount of the account "Net balance receivable from agents and conductors" at the end of Federal control may be turned over by the director general to the company. He may also turn over all assets which have accrued out of operation; and the company shall, to the extent of the cash received or realized from such assets, pay and charge to the director general all expenses arising out of railway operations during Federal control, including reparation and other claims, and may, unless objection is made by the director general, pay and charge to him any such expenses, including reparation and other claims, in excess of the cash so received or realized. On the first day of the third month following the termination of Federal control an accounting between the parties shall be had, and so on the first of each third month thereafter. Any balance found due either party shall be payable as of the date on which the account is stated and shall bear interest until paid.

(d) At the end of Federal control there shall be paid to the companies any balance due then remaining unpaid of the cash received from them at the beginning of or during Federal control, together with any unpaid interest which may have accrued upon the same. There shall also be paid to the companies any funds created under the provisions of this agreement except to the extent that such funds may have been properly used under this agreement.

(e) Wherever under any provision of this section there is to be an adjustment of interest, it shall be at the rate of five per cent per annum, unless the parties shall in any case agree on a different rate.

(f) After Federal control no claim by or against the director general shall be settled by the companies against the written objection of the director general or the Attorney General of the United States. The conduct of all litigation before any court or commission arising out of such disputed claims or out of operations during Federal control shall be in charge of the companies' legal force and the expense thereof shall be paid by the companies; but the director general or the Attorney General may, at the expense of the United States, employ special counsel in connection with any such litigation.

EXECUTION

In witness whereof, these presents have, as of the day and year first above written, been duly signed, sealed, and delivered by Walker D. Hines, Director General of Railroads, and duly signed, sealed, and delivered by the Baltimore and Ohio Railroad Company and its five affiliated companies, by their respective presidents, or vice presi dents, and their respective corporate seals affixed hereto, attested by their respective secretaries, such execution and delivery on the part of said companies having been duly ordered and directed by vote of their respective boards of directors on the 28th day of May and 21st and 23rd days of June, 1919, which action on the part of the Baltimore and Ohio Railroad Company had been authorized by a vote of its stockholders at a special meeting duly held on the 21st day of June, 1919, at the company's principal office in the city of Baltimore, and State of Maryland, and such action of the respective boards of directors of said five affiliated companies having been duly authorized by vote of their respective stockholders at meetings duly called and held subsequently to said last-mentioned date, certificates of all

of said meetings, duly attested by the respective secretaries of said companies, have been lodged with the director general.

WALKER D. HINES, [SEAL.]
*Director General of Railroads.*

THE BALTIMORE AND OHIO RAILROAD COMPANY,
By DANIEL WILLARD, *President.* [SEAL.]
Attest:
C. W. WOOLFORD, *Secretary.*

THE STATEN ISLAND RAPID TRANSIT RAILROAD COMPANY,
By DANIEL WILLARD, *President.* [SEAL.]
Attest:
C. W. WOOLFORD, *Secretary.*

THE SANDY VALLEY AND ELKHORN RAILWAY COMPANY,
By DANIEL WILLARD, *President.* [SEAL.]
Attest:
C. W. WOOLFORD, *Secretary.*

THE BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD COMPANY,
By DANIEL WILLARD, *President.* [SEAL.]
Attest:
C. W. WOOLFORD, *Secretary.*

COAL AND COKE RAILWAY COMPANY,
By GEO. M. SHRIVER, *Vice President.* [SEAL.]
Attest:
C. M. HENDLEY, *Secretary.*

THE LONG FORK RAILWAY COMPANY,
By DANIEL WILLARD, *President.* [SEAL.]
Attest:
C. W. WOOLFORD, *Secretary.*

I hereby certify the foregoing is a true and correct copy.

A. F. FINCHER,
*Office Manager,*
*Director General of Railroads.*

28 VIII. *Judgment*

At a Court of Claims held in the city of Washington on the 16th day of February, A. D., 1925, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the plaintiff, and do order and adjudge that the plaintiff, as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of eighteen thousand seven hundred and ninety-six dollars and sixty-eight cents ($18,796.68). By the court.

IX. *Proceedings after entry of judgment*

On April 29, 1925, the defendant filed a motion for leave to file a motion for a new trial.

On May 4, 1925, the court overruled the defendant's motion for leave to file a motion for a new trial.

X. *Petition for appeal*

(Filed May 12, 1925)

From the judgment rendered in the above-entitled cause on the 16th day of February, 1925, in favor of claimant, the defendants, by their Attorney General, on the 12th day of May, 1925, make application for, and give notice of, an appeal to the Supreme Court of the United States.

HERMAN J. GALLOWAY,
*Assistant Attorney General.*

XI. *Order allowing appeal*

It is ordered by the court, this 12th day of May, 1925, that the defendant's application for appeal be and the same is allowed.

29 In Court of Claims of the United States

[Title omitted.]

*Clerk's certificate*

I, F. C. Kleinschmidt, assistant clerk, Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the order of the court, and memorandum, entered January 5, 1925; of the amended petition, filed by order of the court; of the re-submission of case; of the findings of fact, conclusion of law and memorandum by the court; of the judgment of the court; of the proceedings after entry of judgment; of the defendant's application for appeal; of the order of the court allowing said application.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this 22nd day of May, A. D., 1925.

[SEAL.]

F. C. KLEINSCHMIDT,
*Assistant Clerk, Court of Claims.*

[Indorsed on cover: File No. 31222. Court of Claims. Term No. 499. The United States, appellant, vs. Baltimore & Ohio Railroad Company. Filed May 23d, 1925. File No. 31222.]

○

POSTPONED TO MERITS
MAR 9 - 1925

FILED
JAN 28 1925
WM. R. STANSBURY
CLERK

IN THE

# Supreme Court of the United States

36

No. 29[illegible]—October Term, 1924. 1925

Pere Marquette Railway Company
*v.*
The United States.

MOTION TO REMAND TO THE COURT OF CLAIMS.

Alex. Britton,
L. H. Cake,
*Counsel for Appellant.*

Press of Byron S. Adams, Washington, D. C.

IN THE

# Supreme Court of the United States

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No. 292- -October Term, 1924.

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Pere Marquette Railway Company,

*v.*

The United States.

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Comes now the appellant, Pere Marquette Railway Company, by counsel, and moves that this case be remanded to the Court of Claims for additional findings of fact and for further consideration.

## STATEMENT OF THE CASE.

This is an appeal from a judgment of the Court of Claims dismissing a petition. The plaintiff, a carrier by railroad, performed transportation service for the United States Government in 1917. It was paid in full the amount claimed and billed for. Subsequently, in 1918 or 1919, after the railroad had been taken under Federal control, the Government accounting officers disallowed the original settlement with the plaintiff (the corporation) for the said service performed in 1917, and claimed an alleged overpayment (to the cor-

poration) of $3,828.08. To get the money back into the Treasury they deducted the sum of $3,828.08 from accounts due the Railroad Administration for service performed during Federal control. The Railroad Administration accountants promptly charged the deduction back against the corporation. It remains outstanding on the latter's books as an unpaid balance on corporate bill GF-803 (for the service performed in 1917). See finding VI; record, page 7. The plaintiff sued to recover the amount of the deduction.

It was conceded by counsel for the Government and by the court that the deduction was improper and should not have been made, in view of the decisions of the Court of Claims in *Missouri Pacific R. R. Co.*, 56 Ct. Cls., 341, and *Alabama & Vicksburg Ry. Co.*, 58 Ct. Cls., 496. But the suit was dismissed, following the decisions in two other cases, *Louisville & Nashville Railroad Company*, No. 33-A, and *Philadelphia & Reading Ry Co.*, No. 34747, decided November 5, 1923, because it was said there could be no recovery by the corporation of such deductions made from Railroad Adminstration accounts, even though charged back by the Railroad Adminstration to the corporation, first, because the repayment or reimbursement from the corporation to the Railroad Administration was no more than a book or paper transaction, and, second, because the final settlement agreement between the corporation and the Director General was a complete release of all liabilities growing out of or connected with Federal control, including this claim.

Although this case was promptly appealed, in most of the other cases involving the same question motions for new trial were filed and were argued and finally a number of such cases were referred to a special com-

missioner for the taking of additional evidence and the reporting of tentative findings of fact. All those cases were finally re-submitted to the court, October 29, 1924, on findings of fact reported by the special commissioner. January 5, 1925, the court announced its decision, approving and adopting the findings of fact reported by the special commissioner, and entering judgments for the plaintiffs in the cases submitted. Opinions, by Chief Justice Campbell, were filed in the *Philadelphia & Reading* case, No. 34747, and the *Southern Railway* case, No. B-118, in which the court said:

> "The facts now found are materially different from those developed in former hearings and so far as the question of the Director General's settlement is concerned present a substantially different case from that made in the earlier hearings. It becomes necessary to review them."

The case at bar is susceptible of the same proof and findings and should be remanded for additional findings and for disposition by the Court of Claims with the other cases of the same class. Even if the questions of law involved in these cases as a whole are questions which should be or will be decided finally by this court, the present case is not a proper case for the presentation of those questions.

Respectfully submitted,

ALEX. BRITTON,
L. H. CAKE,
*Counsel for Appellant.*

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1925.

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No. 36.

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PERE MARQUETTE RAILWAY COMPANY, *Appellant.*

*vs.*

THE UNITED STATES.

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## APPEAL FROM THE COURT OF CLAIMS.

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## BRIEF FOR THE APPELLANT.

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### THE OPINION OF THE COURT OF CLAIMS.

With the findings of fact the Court of Claims filed simply a memorandum as follows:

> "See Louisville and Nashville, No. 33-A; and Philadelphia and Reading, No. 34747, decided November 5, 1923." (R. 9)

The opinions in the cases cited were not reported because subsequently the court entertained motions for new trial and reversing its former action entered judgment in each case for the plaintiff. For a fuller explanation see the statement of the case, *post.*

## GROUNDS OF JURISDICTION.

The final judgment in the present case was entered on December 10, 1923. The plaintiff's motion for allowance of an appeal was filed February 1, 1924, and was allowed by the court on February 11, 1924. The appeal was taken under sections 242 and 243 of the Judicial Code. (R. 9-10.)

## STATEMENT OF THE CASE.

In March, 1917, the railway company, with other connecting railroads, carried twenty-eight carloads of military impedimenta on Government bills of lading from Fort Bliss, Texas, to Fort Wayne, Michigan. The railway company presented its bill for the transportation charges, amounting to $3,828.08, on the basis of freight rates less land-grant deductions. The bill was paid by the Army disbursing officer. Some time later the Auditor for the War Department disallowed the payment because of a ruling of the Comptroller of the Treasury that the Government was entitled to the carriage of one carload of military impedimenta free for every twenty-five soldiers carried as passengers, under certain provisions of the passenger tariffs. However, the railway company had already been paid by the disbursing officer, and when the disallowance was made by the Auditor for the War Department the railroad was under Federal control. So, to get the money back into the Treasury, the Auditor deducted the amount in question *from money due the United States Railroad Administration* on account of transportation service during Federal control. (R. 7.) It was a recovery from the Railroad Administration of the overpayment claimed to have been made to the corporation.

In an adjustment of accounts between the railway company (the corporation) and the Railroad Administration, in July, 1920, the amount in question was credited by the corporation to the Railroad Administration through what was termed the Railroad Administration control account.

It remains outstanding on the railway company's books as an unpaid balance on its bill for the service rendered in March, 1917, originally paid but afterwards disallowed by the Auditor for the War Department and recovered into the Treasury through the Railroad Administration in the manner stated (R. 7).

November 12, 1921, the railway company and the Director General of Railroads entered into a final settlement contract which is copied in full in the findings of fact. (R. 8-9.)

It was conceded in the Court of Claims that the railway company's bill was properly paid by the disbursing officer, and that the subsequent disallowance by the Auditor for the War Department was wrong. *Missouri Pacific Railroad Co. vs. United States,* 56 Ct. Cls. 341. See also the opinion of this Court in *St. L. B. & M. Ry. Co. vs. United States,* 268 U. S. 169, 173.

The sole question for decision is the right of the railway company, *having suffered the loss as a result of the disallowance by the Auditor and the recovery of the money into the Treasury through the instrumentality of the Railroad Administration,* to recover by suit in the Court of Claims.

When this case was decided by the Court of Claims, with the *Louisville & Nashville* case, No. 33-A, and the *Reading* case, No. 34747 (which were first decided November 5, 1923) it was said by the court that there could be no recovery by the corporation of such deductions made from Railroad Administration accounts, even though charged back by the Railroad Administration to the corporation, first, because the repayment or reimbursement from the corporation to the Railroad Administration was no more than a paper transaction, and, second, because the final settlement contract between the corporation and the Director General was a complete release of all liabilities growing out of or connected with Federal control, including this claim.

This case was promptly appealed, but in other cases involving the same question, motions for new trial were filed

and were argued and finally a number of such cases were referred to a special commissioner for the taking of additional evidence and the reporting of tentative findings of fact. Those cases were finally re-submitted to the court, October 29, 1924, on findings of fact reported by the special commissioner. January 5, 1925, the court announced its decision approving and adopting the findings of fact reported by the special commissioner, and entered judgment in each case for the plaintiff. In the following cases appeals were taken by the United States, and thereafter, at the last term, this court granted motions to advance and to consolidate for hearing with the present case:

401 *United States vs. Reading Company;*
402 *Reading Company vs. United States* (cross-appeal);
403 *United States vs. Southern Railway Company;*
404 *United States vs. St. L. B. & M. R'y. Company.*

The present situation then is that this case, in which the court decided the question in favor of the Government, and the cases listed above, in which the court upon further consideration decided the question in favor of the carriers, are advanced for hearing together as one case. The sole question for decision, as we have said, is the right of the carriers, having suffered losses as a result of the disallowances made by the Auditor for the War Department which were made effective and recovered into the Treasury by deductions through the Railroad Administration, to recover by suit in the Court of Claims what is due them.

## ARGUMENT.

Although in this case the Court of Claims entered judgment dismissing the petition and in the other cases judgments in favor of the carriers, it is apparent from the statement of the case and the history of the proceedings that this case is exactly like the others, and that the judg-

ment of dismissal in this case would have been withdrawn by the court itself on January 5, 1925, when the other cases were decided finally, had this case then been within its control. All these cases stand together and will be submitted on one oral argument. For the record, however, this brief is filed for the Pere Marquette Railway Co., appellant in this case, No. 36.

1. THE RAILWAY COMPANY'S CAUSE OF ACTION.

Admittedly the railway company performed service for the War Department for which it has not received one dollar. The payment which was made at once by the Army disbursing officer was subsequently disallowed *and recovered into the Treasury,* and the railway company was left with nothing but a "claim" which now the Government seeks to defeat. The findings show that that result was reached through the acts of two departments of the Government. First, the Auditor for the War Department disallowed the original payment (wrongly, as is now admitted). Second, the Railroad Administration, another department of the government, allowed the Auditor for the War Department to use it (the Railroad Administration) as an instrument by which the amount in question could be recovered from the railway company. The findings show that the amount in question was so taken from the railway company, not through any act of its own, but through the act of the Auditor for the War Department, aided by the intervention of the Railroad Administration.

It is inconceivable that under such circumstances the railway company cannot recover from the United States the compensation lawfully due it for the service rendered. It may recover on the theory that the recovery by the Government of the money originally paid, by means of the disallowance and deduction made by the Auditor for the War Department and the charging back made by the Railroad Administration, was improper and erroneous (which is admitted), and there is necessarily an implied contract to re-

pay to the railway company the amount so recovered and withheld from it.

Or the suit may be regarded as a cause of action on the transportation service performed by the railway company for which payment was originally made in full, but later withdrawn in the manner described. Admittedly, the Government has not paid for the service and the railway company has suffered the loss. Certainly it may be said, therefore, that the money is still due the railway company for the transportation service rendered.

Or, third, the suit may be regarded as an equitable claim, in the nature of an equitable assignment. Of equitable claims "for damages" or for money judgments, the court has jurisdiction under section 145 of the Judicial Code.

"Sec. 145. The Court of Claims shall have jurisdiction to hear and determine the following matters:

> "First, All claims * * * or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty, if the United States were suable. * * *"

2. THE SETTLEMENT OF NOVEMBER 12, 1921, AS A DEFENSE.

The suit is defended on the ground that the settlement of November 12, 1921, between the railway company and the Director General of Railroads, is a bar to the railway company's right to recover, that is, that it has released the United States from liability.

In the agreement of November 12, 1921, the railway company acknowledges the payment of money by the Director General in full satisfaction of all claims, etc., "against the Director General, or anyone representing or claiming to represent the Director General, the United States, or the President, growing out of or connected with the possession,

use and operation of the Company's property by the United States during the period of Federal control, * * * ."

We venture to suggest that the intention of the agreement would have been clearer if the words "or anyone representing or claiming to represent the Director General, the United States, or the President" were enclosed in parentheses, so that the clause would read:

> In full satisfaction and discharge of all claims, rights, and demands, of every kind and character, which the said Companies, both jointly and severally, now have or hereafter may have or claim *against the Director General* (or anyone representing or claiming to represent the Director General, the United States, or the President), growing out of or connected with the possession, use, and operation of the Company and property by the United States during the period of Federal control.

The claim of the railway company *in this case* is not a claim against the Director General. The findings show that it never has been a claim against the Director General, but is and has always been a claim *against the War Department on account of transportation service performed prior to Federal control.* The Director General was concerned only to the extent that the deduction was erroneously made by the Auditor from money credited to him (the Director General) and that he (the Director General) charged it against the railway company and was given credit therefor and was later fully reimbursed.

In finding VI the court found that:

> "this sum of $3,828.08 was credited by the plaintiff corporation to the Railroad Administration through what was termed the Railroad Administration control account, and said sum remains outstanding on plaintiff's corporate books as an unpaid balance on its bill GF-803, paid but afterwards disallowed by the Auditor as aforesaid."

The fact is, therefore, that the claim here in suit has never been a claim against the Director General, but always a claim against the War Department and has been so charged on the plaintiff's books, both *before* and *after* the final settlement with the Director General.

The claim in this case against the War Department, or the United States, is not a claim growing out of the possession, use and operation of the plaintiff's property during Federal control, for the same reasons. It is a claim for an unpaid balance due for transportation furnished in 1917, prior to Federal control. The manner in which the disallowance made by the Auditor was made effective and was finally charged against the plaintiff cannot change the essential fact that the plaintiff's claim in this case *is for an unpaid balance due for transportation furnished in 1917.*

## THE PLAINTIFF'S MOTION TO REMAND TO THE COURT OF CLAIMS.

March 2, 1925, we submitted for the appellant a motion to remand this case to the Court of Claims, in view of the decision of that court in the case of the *Reading Company,* decided January 5, 1925, and other cases. March 9, 1925, this court ordered that consideration of the motion be postponed until the hearing of the case on the merits. Since then the case of the *Reading Company,* and the other cases referred to, have been appealed by the United States and are now consolidated with this case for hearing as one case.

There is only one important difference between this case, in which the appeal was allowed February 11, 1924, and the other cases which were decided by the Court of Claims on January 5, 1925. In the latter, particularly in No. 403, *United States vs. Southern Railway Co.,* and No. 404, *United States vs. St. L. B. & M. R'y. Co.,* the findings of fact included certain statements of account furnished by the Railroad Administration at the request of the Court of Claims which showed the accounts and claims which were

settled and covered by the final settlement contract. Those statements of account were taken as evidence of the fact that the deductions which the railroad companies were seeking to recover had not been included in or covered by the release contained in the final settlement contract. See finding XIII in No. 403, *United States vs. Southern Railway Co.*, and finding XV in No. 401 *United States vs. Reading Company.* There is no such finding in this case, *Pere Marquette Railway Co. vs. United States,* No. 36, because when it was decided those statements of account, although known to be in existence, were not available. They were later obtained by the Court of Claims from the Railroad Administration and were used in the findings of fact in the cases decided January 5, 1925.

We do not think those findings are material, but we cannot anticipate the argument of these cases nor the decision of this court and lest the decision may turn on those findings we renew our motion that this case be remanded to the Court of Claims for additional findings of fact and for disposition in accordance with the decision of this court in the other cases.

Respectfully submitted,

ALEX. BRITTON,
LAWRENCE H. CAKE,
*Counsel for Appellant.*

# In the Supreme Court of the United States

OCTOBER TERM, 1924

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No. 292

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PERE MARQUETTE RAILWAY COMPANY, APPELLANT,

*v.*

THE UNITED STATES

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*APPEAL FROM THE COURT OF CLAIMS*

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**SUGGESTIONS IN OPPOSITION TO MOTION OF APPELLANT TO REMAND**

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On December 10, 1923, appellant's petition was dismissed by the Court of Claims (Tr. 9) and on February 11, 1924, the appeal was taken (Tr. 10).

On Friday, January 30, 1925, the case was continued to the next Term under Rule 26, on motion of counsel for appellant and a stipulation (Minutes, 177).

It appears that in certain other cases decided November 5, 1923, the Court of Claims had likewise

33846—25

dismissed the petitions. Instead of taking appeals, the petitioners in those cases seasonably made motions for new trials which were granted. On new records containing additional evidence the Court of Claims found for the petitioners in the *Philadelphia & Reading* case and the *Southern Railway* case. In *Reading Co.* v. *United States,* No. 34747, decided January 5, 1925, on rehearing the Court of Claims said: (p. 17) * * * " that facts appear in some other cases of this class that may call for a differentiation of this case." The Court of Claims, therefore, is not only considering each case on its own peculiar facts and circumstances but different items in the same case are being separately considered.

Counsel for appellant now ask that the instant case be remanded because (1) " it is susceptible of the same proof and findings and should be remanded for additional findings and for disposition by the Court of Claims with the other cases of the same class "; and (2) " even if the questions of law involved in these cases as a whole are questions which should be or will be decided finally by this Court, the present case is not a proper case for the presentation of those questions."

It is observable that the motion is not to remand for specific findings on particular subjects; but, in substance, is a motion for a new trial of the whole case. In other words, they claim this Court should save them from their own deliberate acts and re-

mand their case to the Court of Claims in order that appellant may partake of the advantages thus gained by others who pursued a different course.

Hitherto the Court has been disinclined to remand cases to the Court of Claims for additional findings in advance of the argument on the merits and opportunity for consideration of the necessity therefor. *United States* v. *Adams,* 9 Wall. 661, 663; *Ripley* v. *United States,* 220 U. S. 491, 496.

In *United States* v. *Anciens Etablissements,* 224 U. S. 309, 329, in denying the motion to remand to the Court of Claims for additional findings, this Court said: "It was further moved that the Court of Claims be instructed to strike out certain matters in the findings which were described to be evidentiary. The motion was postponed to the hearing, and is now to be considered." See, also, *United States* v. *Omaha Tribe of Indians,* 253 U. S. 275, 280; *Vogelstein* v. *United States,* 262 U. S. 337.

The motion to remand should be denied or consideration thereof postponed until the hearing, when the Court may take appropriate action in the light of the arguments.

JAMES M. BECK,
*Solicitor General.*
BLACKBURN ESTERLINE,
*Assistant to the Solicitor General.*

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No. 398.

**THE UNITED STATES, APPELLANT, v. THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.**

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# In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 398

THE UNITED STATES, APPELLANT

*v.*

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

## BRIEF FOR APPELLEE

### STATEMENT OF THE CASE

At different times during the years 1916 and 1917, The New York, New Haven and Hartford Railroad Company (hereinafter referred to as the New Haven Company), and its connecting carriers, at the request of the proper officers of the United States Army, transported as freight, certain Government property, known as military impedimenta, in connection with movements of United States troops (R. 13).

The New Haven Company, as last carrier, rendered its bills to the disbursing quartermaster, for

the transportation of said impedimenta, based upon rates contained in current freight tariffs (R. 13). There were fifteen bills in all (R. 8, 13, 14). Twelve of the bills were paid to the New Haven Company prior to January 1, 1918, and hence prior to the date of the Federal control of railroads (R. 13). The remaining three bills were disallowed by the Auditor for the War Department after the termination of Federal Control (R. 14). The Court of Claims found that on these three bills the New Haven Company was entitled to $3,015.11 (R. 14), and as the Government does not resist this portion of the judgment of the Court of Claims, the only bills involved in this appeal are the twelve bills which were paid to the New Haven Company prior to January 1, 1918, and which are set forth by numbers in Finding VIII (R. 13).

On December 28, 1917, the operation of the New Haven Company, with other railroads, was taken over by the Government (Act of August 28, 1916, Ch. 418, 39 Stat. 619, 645; President's Proclamation of December 26, 1917, 40 Stat. 1733), and the control and operation was relinquished by the Government on February 29, 1920 (Act of February 28, 1920, Ch. 91, 41 Stat. 457).

The Auditor for the War Department, in auditing the disbursing officer's accounts, disallowed the payments made to the New Haven Company on its twelve bills, to the extent of $9,160.89, under a ruling of the Comptroller (24 Comp. Dec. 774) (R. 11), that the Government was entitled to have had its military impedimenta carried free at the

rate of one baggage car for each group of twenty-five men transported (R. 13).

The New Haven Company was called upon by the Auditor of the War Department to refund the $9,160.89 disallowed, and upon its refusal to do so, the Auditor deducted this amount from bills of the United States Railroad Administration which had been presented to the Auditor for the War Department for payment (R. 13). The Railroad Administration subsequently charged the deduction of $9,160.89 to the New Haven Company, and, in January, 1921, this amount was paid by the New Haven Company to the Railroad Administration through the so-called "trustee account" which had been created by General Order No. 68, issued by the Railroad Administration to take effect at the termination of Federal control. The New Haven Company charged the amount on its own books in a suspense account against the War Department to await action by the Auditor or the Court of Claims (R. 13, 14, 18, 19, 20).

On April 26, 1919, the Director General of Railroads and the New Haven Company entered into an agreement concerning the operation of the New Haven's railroad by the Director General, and the material portions of said agreement are set forth in Finding XII (R. 15, 16, 17).

On March 21, 1922, the New Haven Company instituted suit against the United States in the Court of Claims, to recover the amount of the deductions (R. 1).

On October 26, 1923, a final settlement contract was entered into by and between the New Haven

Company and the Director General of Railroads, acting on behalf of the President and the United States. The final account and final settlement agreement are fully set forth on pages 22, 23, 24 and 25 of the Record.

## ARGUMENT

### I

### THE UNITED STATES IS THE PROPER PARTY DEFENDANT.

The Government's argument consists of two contentions; first, that the items involved in this suit were included in the so-called final settlement contract, and that hence suit is barred by said contract and release; and, second, that if the items were not included in the final settlement contract then the New Haven Company has an "open account" which should be settled with the Director General of Railroads. This latter contention will be discussed first.

It has been decided by the Court of Claims that the theory of the Comptroller that the Government was entitled to free transportation of its property on the basis of one baggage car for every twenty-five men transported, was erroneous, and that the deductions were unlawful.

> Missouri Pacific Railway Co. v. The United States, 56 C. Cls. 341.
>
> Alabama and Vicksburg Railway Co. v. The United States, 56 C. Cls. 496.

The fact that the Government is not offering any resistance to that portion of the judgment of the Court of Claims which relates to the amounts

which were disallowed directly from the New Haven Company's own bills, leads to the obvious conclusion that no appeal would have been taken had not the question of Federal control been involved. It therefore becomes necessary to examine the relationship of the parties concerned and to determine what effect, if any, the period of Federal control had upon the situation brought about by the deductions made by the Auditor for the War Department.

It should be borne in mind that the transportation services were performed and the freight bills paid to the New Haven Company before Federal control began (R 13). The matter was a closed issue until, in the month of April, 1918, the Comptroller issued the so-called "free baggage car ruling" (24 Comp. Dec. 774) (R. 11).

Under that ruling, the Auditor for the War Department figured that the New Haven Company had been overpaid to the extent of $9,160.89, and demand was made upon the New Haven Company to return this sum, which it refused to do. The Government then could have instituted suit against the New Haven Company to recover the amount which was claimed to have been overpaid. It did not choose to pursue this course. It was much easier to deduct the amount from future bills to be presented by the New Haven Company. But, at that particular time, the New Haven Company was not operating its property, the Government having assumed complete control through its agent, the Director General of Railroads. As the New Haven Company was not operating, it had

no transportation bills to present to the Government, hence there was no opportunity for the Auditor to deduct the $9,160.89 from bills of the New Haven Company. However, there was still another method which could be used and was used. The Director General of Railroads, operating the property of the New Haven Company, had bills for transportation which were presented to the War Department for settlement. These bills were allowed, but in making payment, the Auditor for the War Department charged against the Director General's bills, the $9,160.89 which the Auditor wanted to get back from the New Haven Company. The Director General, having thus paid the claim which the War Department had against the New Haven Company, very properly charged the $9,160.89 to the New Haven, as it had the right to do under the so-called Uniform Contract which existed between the Director General and the New Haven Company (R. 13, 14, 15). Under the terms of that contract, the Director General was made the agent of the New Haven Company to pay all expenses and claims arising out of the operation of the railroad prior to January 1, 1918, the date Federal control began. The Director General had the further right under that contract to charge any such payments to the New Haven Company, and he did so in this particular instance (R. 13, 14). And, carrying out its obligation to repay the Director General any amounts which he had expended for corporate matters of the New Haven Company, the sum of $9,160.89 was actually paid by the New Haven Company, in cash, to the Director General in the month of January, 1921.

The payment was made into an account known as the "trustee account", which was created by General Order No. 68 of the United States Railroad Administration, to take effect at the termination of Federal control. By this order the New Haven Company was made trustee for the Director General to collect the assets and pay the liabilities of the Director General after the termination of Federal control. Having paid the amount of $9,160.89 to the Director General, thereby making him whole, the New Haven Company brought suit in the Court of Claims to recover this amount from the Government.

Counsel for the Government now contend that inasmuch as the money was paid into the trustee account and that account was excepted from the final settlement contract, that the New Haven Company has an "open account" which should be settled with the Director General. It is difficult to see the logic of such an argument. The New Haven Company never had any dispute with the Director General concerning the deductions of $9,160.89, nor could it have a dispute or claim now. The transactions, out of which the deductions arose, all concerned the New Haven Company and not the Director General. The dispute was between the War Department and the New Haven Company as to the correctness of the free baggage car ruling. When the deductions were made from the Director General's bills, he had the right to charge them to the New Haven and the latter had no other choice, under the standard contract, than to accept the charge and make payment to the Director General. The money was paid to the Di-

rector General in January, 1921, and now, nearly five years later, the Government says the New Haven Company should seek the return of the money from the Director General, on the theory that the trustee account is still open and remains to be adjusted. There is no finding as to when or how the trustee account was to be adjusted, so that the Government's assumption that the account is still open, is unwarranted. As a matter of fact the trustee account is closed, but whether open or closed, is of little moment as far as this case is concerned. Let us assume, for the sake of argument, that the judgment of the Court of Claims should be reversed and the New Haven Company should seek to get the money from the Director General on the ground that the money was paid into the trustee account erroneously. Could it be reasonably presumed that the Director General would voluntarily pay back, nearly five years later, the money which was paid to him by the New Haven Company to reimburse him for money spent in payment of a claim against the New Haven Company?

It is more reasonable to presume that the Director General would stand upon the terms of the contract which gave him the right to pay the claim against the New Haven and placed the obligation upon the New Haven to make good to him. And, to carry the matter one step further, let us assume that the New Haven Company should sue the Director General to recover the amount. How could the New Haven Company escape the force and effect of the uniform contract and at this late date dispute the right of the Director General to have

paid the New Haven's claims, or deny its obligation to repay the Director General? Furthermore a suit against the Director General has been held to be, in effect, a suit against the United States. Sandoval v. Davis, Director General, 278 Fed. 968; In re Tide Water Coal Exchange, 280 Fed. 648. And if the claims were paid by the Director General, either voluntarily or as the result of a suit, where would he get the money to pay except from a Congressional appropriation or from some fund which had previously been appropriated by Congress? The Director General was, and is, only an agent, acting for the President and the United States, and the money to pay the New Haven's claim will have to come out of the United States Treasury, whether a judgment is secured against the United States or against the Director General. The net result would be the same regardless of the defendant.

The Court of Claims has found that any moneys erroneously paid into the trustee account by deposit in the bank where such account was kept could be withdrawn by a railroad company making such deposit, with the consent of the Director General (R. 14). But this is far from a finding that the money was erroneously paid into the trustee account by the New Haven Company, which is the basis of the Government's argument that the New Haven should adjust the matter with the Director General. There is nothing for the Director General to settle. This is not a question or dispute "arising out of or incident to Federal control", nor does it affect the question of compensation for

the use of the New Haven's property, which are the only matters which the Director General was to settle at the termination of Federal control.

It is a mere circumstance that the Director General was in possession of the railroad of the New Haven Company when the Auditor for the War Department sought to make deductions on account of alleged overpayments to the New Haven. The fact that the Director General, as agent for the New Haven, paid the claim by means of deductions from its own bills, and that the New Haven then made good the money to its agent, does not effect the legal situation between the Auditor for the War Department and the New Haven Company. The result, legally, was the same as though the deductions had been made directly from the New Haven Company's assets. The result, practically, was that the deductions were accomplished by two operations instead of one.

This suit was properly instituted against the United States, because the matter involved does not affect the Director General and does not come within any of the powers and duties conferred upon him in connection with the settlement of matters arising out of Federal control.

The New Haven has been outstanding this sum of $9,160.89 since January, 1921, and is entitled to recover this amount from the defendant.

## II

### THE FINAL CONTRACT OF SETTLEMENT BETWEEN THE DIRECTOR GENERAL OF RAILROADS AND THE APPELLEE IS NOT A BAR TO RECOVERY AGAINST THE UNITED STATES.

The Court of Claims has found that the $9,160.89 was paid to the Director General by the New Haven Company into a trustee account which "is expressly excepted from the effect of the settlement agreement" (R. 17). In view of this finding it is difficult to understand why the Government advances the argument that suit is barred by the final settlement contract.

The New Haven case is different from the cases of The United States v. The Reading Company, No. 401, The United States v. Southern Railway Company, No. 403, and The United States v. St. Louis, Brownsville & Mexico Railway Company, No. 404. In these cases the deductions were made from bills of the Director General, who then charged the deductions to the railroad corporations in the account "corporate transactions". The railroads then gave the Director General credit on their books. In other words the entire matter was handled by bookkeeping entries. There was no actual cash payments by the railroads to the Director General as in the New Haven case. The Government's attempt to compare the New Haven case with the cases cited above and its assumption that the deductions were charged in the same accounts and hence come within the final settlement contract, are unwarranted and unfounded in fact.

The New Haven paid the $9,160.89 to the Director General in cash. The money was paid into the trustee account created by General Order No. 68 of the United States Railroad Administration, and the Court of Claims has found that this account was not included in the final settlement contract.

## III

### CONCLUSION

The judgment of the Court of Claims should be affirmed.

Respectfully submitted,

BENJAMIN D. WINNER,
*Attorney for Appellee.*

No. 399. THE UNITED STATES, APPELLANT, v. CENTRAL NEW ENGLAND RAILWAY COMPANY

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# In the Supreme Court of the United States

OCTOBER TERM, 1925

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No. 399

THE UNITED STATES, APPELLANT

*v.*

CENTRAL NEW ENGLAND RAILWAY COMPANY

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## BRIEF FOR THE APPELLEE

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### STATEMENT OF THE CASE

During the years 1916 and 1917, the Central New England Railway Company and its connecting carriers transported certain military impedimenta in connection with movement of United States troops (R. 14). As terminal carrier, the Central New England presented its bills to the disbursing quartermaster on the basis of rates contained in current freight tariffs (R. 14). There were fifteen bills in all (R. 8, 9). The Government does not offer any resistance to the bills covered by Findings VII and VIII (R. 14), so the only bills involved in this appeal are the five bills set



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forth in Finding IX (R. 14, 15). These bills were paid by the disbursing officer, as presented, to the Central New England Company.

On December 28, 1917, the operation of the Central New England Company, with other railroads, was taken over by the Government (Act of August 28, 1916, Ch. 418, 39 Stat. 619, 645; President's Proclamation of December 26, 1917, 40 Stat. 1733), and the control and operation was relinquished by the Government on February 29, 1920 (Act of February 28, 1920, Ch. 91, 41 Stat. 457).

The Auditor for the War Department, in auditing the disbursing officer's accounts, disallowed the payments made to the Central New England Company on its five bills, to the extent of $1,843.94 (R. 15), under a ruling of the Comptroller (24 Comp. Dec. 774) (R. 11), that the Government was entitled to have had its military impedimenta carried free at the rate of one baggage car for each group of twenty-five men transported (R. 11).

Thereafter, the Auditor for the War Department deducted the amount of $1,843.94 from accounts of the Railroad Administration (R. 14). The Railroad Administration charged the amount deducted to the Central New England and the latter paid said amount to the Railroad Administration, subsequent to Federal control, through the so-called "trustee account", which was created by General Order No. 68, issued by the Railroad Administration to take effect at the termination of Federal control. The Central New England charged the amount on its own books in a suspense account against the War Department to await action by the Auditor on the Court of Claims (R. 15).

On February 13, 1919, the Central New England Company and the Director General of Railroads entered into an agreement covering the operation of the property of the Central New England by the Director General. The material portions of said agreement are set forth in Finding XII (R. 15, 16, 17).

On March 21, 1922, the Central New England instituted suit against the United States in the Court of Claims, to recover the amount of the deductions (R. 1).

On August 1, 1923, a final settlement contract was entered into by and between the Central New England Company and the Director General of Railroads, acting on behalf of the President and the United States. The final account and final settlement agreement are fully set forth on pages 22, 23, 24 and 25.

## ARGUMENT

The Central New England case is similar to the New Haven Case, No. 398, and reference is made to the brief and argument in that case to support the contention of the appellee that the judgment of the Court of Claims should be affirmed.

Respectfully submitted,

BENJAMIN D. WINNER,
*Attorney for Appellee.*

No. 400. THE UNITED STATES, APPELLANT, v. THE NEW ENGLAND STEAMSHIP COMPANY

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 400

THE UNITED STATES, APPELLANT

*v.*

THE NEW ENGLAND STEAMSHIP COMPANY.

# BRIEF FOR THE APPELLEE

## STATEMENT

The New England Steamship Company transported a shipment of military impedimenta for the Government on September 20, 1915, for which a bill was presented to the Government for $139.00, which was paid in full (R. 8).

During the period of Federal control, the Auditor for the War Department deducted $124.00 from moneys due the United States Railroad Administration, claiming that the New England Steamship Company had been overpaid that amount as the result of the free baggage car ruling made by the Comptroller (24 Comp. Dec. 774) (R. 8).

The Railroad Administration charged the $124.00 to the New England Steamship Company, and in January, 1921, the Steamship Company paid said sum to the Railroad Administration into the trustee account, created by General Order No. 68 of the Railroad Administration (R. 8).

On February 28, 1919, the New England Steamship Company and the Director General entered into a contract covering the operation of the lines of the Steamship Company during Federal control (R. 9). The material parts of said contract are set forth in Finding X (R. 9, 10, 11).

On March 30, 1922, there was a final settlement contract entered into by and between The New England Steamship Company and the Director General of Railroads (R. 9). The final account and final settlement contract are set forth on pages 24, 25, 26 and 27 of the Record.

## ARGUMENT

This case is similar to the case of The United States v. The New York, New Haven and Hartford Railroad Company, No. 398, and the brief and arguments in that case are relied upon to support the contention of the appellee that the judgment of the Court of Claims should be affirmed.

Respectfully submitted,

BENJAMIN D. WINNER,
*Attorney for Appellee.*

Office Supreme Court,
FILED
OCT 28 1925
WM. R. STANSBU
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1925

No. 401

THE UNITED STATES, *Appellant*,
*vs.*
READING COMPANY.

No. 402

READING COMPANY, *Appellant*,
*vs.*
THE UNITED STATES.

## APPEALS FROM THE COURT OF CLAIMS

## BRIEF FOR READING COMPANY

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WM. L. KINTER,
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*Of Counsel.*

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1925

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No. 401

THE UNITED STATES, *Appellant*,
*vs.*
READING COMPANY.

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No. 402

READING COMPANY, *Appellant*,
*vs.*
THE UNITED STATES.

## APPEALS FROM THE COURT OF CLAIMS

The above cases are really one case, No. 401 being an appeal by the United States, and No. 402 being a cross-appeal by Reading Company, which was the plaintiff below.

The opinion below has not yet been reported, but it is on pages 24-30 of the Record.

Judgment was rendered in favor of Reading Company, January 5, 1925, for $14,236.04 (R. 29, 42) on the first branch of the case, and dismissing the petition as to the second branch (R. 24, 29).

The action was to recover for transportation services rendered to the United States (R. 1-8), prior to the Federal

control of Railroads, and it was prosecuted under the statute conferring general jurisdiction on the Court of Claims.

The court below in its opinion divided the amounts sued for into two classes (R. 27, 29), and so treated them in the opinion, as will appear later.

## STATEMENT OF CASE FOR READING COMPANY

This case was before the Court of Claims several times (R. 9, 24). That court first awarded judgment to plaintiff for $14,236.04 (R. 9); then, on motions for new trials by both parties, the case was dismissed on the ground that a final settlement between the Director General and plaintiff operated as a release of these claims against the Government and finally, on plaintiff's motion for a new trial (R. 9), the plaintiff again had judgment for $14,236.04 (R. 42). The Government has appealed on the ground that by the contract of final settlement between the Director General and plaintiff, the latter released its claims against the Government; and the plaintiff is prosecuting a cross-appeal on the ground that it should have received a larger judgment.

The facts are as follows:

In the Fall and Winter of 1916-1917, plaintiff, as last carrier, handled a number of movements of troops and impedimenta from the Mexican Border to various points on its line in Pennsylvania (R. 8, 14, Finding VIII; R. 16, Finding X). For the freight service, it rendered bills to the disbursing officers of the United States Army, basing its charges for the transportation of the miscellaneous impedimenta—camp equipage, company property, etc.—upon Class A, Net Cash, and without land-grant deductions **(Finding X).**

Subsequently, June 18, 1918 (R. 11, Finding 3), the Comptroller General decided that under the provisions of carriers' baggage tariffs the Government was entitled to one free car for every twenty-five passengers in the accom-

panying passenger movement, and that was the first notification that the Government claimed one special baggage car or its equivalent for every twenty-five soldiers traveling with army impedimenta. Prior to that decision the Government paid for such impedimenta as freight (Finding 3).

Since that decision of the Comptroller the accounting officers of the Government have made settlements upon the basis that the United States was entitled to one baggage car free for the transportation of its camp equipment and company property for every twenty-five officers and enlisted men traveling (Finding 3, R. 12).

Bills were presented to the disbursing officer as above stated (Finding X, R. 16), and he notified the carrier that he was not authorized to pay on that basis (Opinion, R. 29), but only on the basis of the application of "Emigrant Moveables" classification to miscellaneous impedimenta (See R. 15, Finding IX), due to decisions of the Comptroller of the Treasury, and thereupon plaintiff restated the bills on that basis and they were so paid without protest (Finding X, R. 16, 17).

With the exception of bill 6629-30-31 (alias 74-76) (see Finding XI, R. 17), none of the bills was paid to plaintiff. They were all paid to the Director General of Railroads for plaintiff's account, subsequent to January 1, 1918, when Federal control began. (Appendix A; R. 30.)

Subsequently, upon a review of the disbursing officers' accounts, the Auditor for the War Department disallowed them (Finding XI, R. 17) and made deductions to adjust them to the basis of the current rulings of the Comptroller of the Treasury that, for the transportation of impedimenta accompanying troops, the Government was entitled to one car free for every 25 men (Finding IV, R. 12). This ruling was erroneous (Opinion, R. 27, 28); it was so held in the *Missouri Pacific case*, 56 C Cls. 341, wherein the court held that neither under the carriers' baggage tariffs (they are

all substantially alike), nor under the military agreements, was the Government entitled to the allowance. That court decision was acquiesced in by the Government, has been followed ever since, and its correctness is not questioned in this case.

The Auditor for the War Department made deductions of the equivalent amounts from outstanding bills of the Reading Railroad Administration for services rendered by the Railroad Administration itself (Finding XI, XII, XIII, R. 17, 18, 19). The Railroad Administration did not stand this loss. It simply "charged to the corporation" the amount of the deduction against the original receipts, and when the account in which the transactions appeared was prepared for the final settlement between plaintiff and the Director General of Railroads, plaintiff was credited therein with only the net proceeds—the amount remaining after the deduction of $14,236.04 (Finding XV, R., 20, 21), and the court found, "The deduction for free baggage, $14,236.04, did not enter into said account" (Finding XV, R. 21, last sentence).

## ARGUMENT ON FIRST BRANCH OF CASE COVERED IN NO. 401.

The opinion of the court below divides the case into two branches (R. 27), the first being "the amounts alleged to have been deducted from this plaintiff's bills because of the Comptroller's ruling (24 Comp. Dec. 774) relative to free transportation of impedimenta accompanying troop movements. * * *"

### THE FINAL SETTLEMENT AGREEMENT DID NOT INCLUDE, AND WAS NOT INTENDED TO INCLUDE, THE CLAIMS OR DEMANDS IN THIS ACTION.

1. We have set forth in the statement of the case that when the Auditor for the War Department made equivalent deductions of outstanding bills of the Railroad Administra-

tion the latter charged to the Corporation the amount of deductions against the original receipts, and when the account was prepared for the final settlement between plaintiff and the Director General, plaintiff was credited therein with only the net proceeds.

The course thus pursued was the natural one. Moreover, it was the one indicated by the construction given by both parties to Sections 4 and 9 of the Standard Contract between the Director General and appellant (R. 23, 24), whereby, to express it briefly, the plaintiff was to be credited with everything received for it, charged with everything paid out for it, and any claim for a balance returned to it as an uncollected account in the final accounting.

2. On June 30, 1922, the Director General of Railroads and plaintiff had a final settlement of their relations. The plaintiff went into and emerged from this final settlement with a credit of $14,236.04 less than it would have had but for the actions of the Auditor for the War Department in making the improper deductions on the first branch of the case and of the Railroad Administration in passing these deductions back to the plaintiff.

The contract of final settlement was in writing (Appendix C; R. 40) and the material part of it is set forth in Finding XVI, R. 22, as follows:

> The said Director General hereby acknowledges payment of the sum of eight million dollars ($8,000,000) by the said companies, the receipt whereof is hereby acknowledged, *in full satisfaction and discharge of all claims, rights, and demands of every kind and character* which the said director general or anyone representing or claiming to represent the director general, the United States, or the President now has or may hereafter have or claim against the said companies or any of them *growing out of or connected with the possession, use, and operation of the companies' property by the United States during the period of Federal control,* or out of the contract between the parties dated

the 18th day of February, 1920, and the said companies both jointly and severally hereby acknowledge the return to and receipt by them of all their property and rights which they are entitled to, and further acknowledge that the director general has fully and completely complied with and satisfied all obligations on his part, or on the part of the United States or the United States Railroad Administration, *growing out of Federal control.*

"*The purpose and effect of this instrument is to evidence a complete and final settlement of all demands of every kind and character as between the parties hereto growing out of the Federal control of railroads.* * * *" (Italics not in original.)

As stated at the outset, it is this instrument which serves as the foundation of the Government's appeal, and which it will urge upon this court, as in the court below, as constituting a release to the Government of claims for transportation on which, we submit, the Government has paid plaintiff *at least* $14,236.04 less than it should have paid. If the words "the United States" had been left out of the agreement, it seems probable that contention would not have been urged. It is plain, we submit, that those words are pure surplusage, as the contract would have meant the same thing without them, and that the United States was thereby released only from any liability of the Director General's. It will be noted that the instrument expressly states that it is a complete and final settlement *between the parties to it,*—the plaintiff and its subsidiaries on the one hand and the Director General on the other.

3. It will also be seen that the instrument acknowledges the return to and receipt by plaintiff of its properties and rights,—which include any outstanding claims against anyone owing the plaintiff, and therefore that statement includes this case.

4. The court found it to be a fact that "The deduction for free baggage, $14,236.04, did not enter into the said account" (R. 21) and so held in its opinion and judgment

(R. 24-29, 42). The "account" spoken of in that finding is the one prepared for the final settlement agreement. We submit that the fact stated in the above quotation takes the judgment for $14,236.04 out of the final settlement agreement, for the parties did not intend that branch of the case to be included therein.

It could not have been the intention of the parties to release to the United States the right to prosecute this case as, by the language of the agreement, it covers only claims, rights and demands "growing out of or connected with the possession, use, and occupation of the companies' property by the United States *during Federal control,* or out of the contract between the parties dated the 18th day of February, 1920." *This case and right of action grew out of transactions prior to such control. The statute and both contracts deal in terms with the period of Federal control only.* Had the parties intended by the final settlement agreement to release this case and right of action against the United States "it would have been easy to say so" in clear language, stating the purpose and naming the case, or so broadening the releasing language as to make it cover matters originating before the period of Federal control. The fact that such language was not used by the parties leads irresistibly to the conclusion that it was not intended that the agreement should cover this case, *then pending in the court below,* where it was filed December 3, 1920 (R. 1). The date of the final settlement agreement is June 30, 1922 (R. 21, 40).

5. We submit that further and unanswerable arguments are stated with clearness and great force in the opinion (R. 24) in which the court below holds that the services were performed and the bills rendered long before Federal control, and so they are beyond the terms of the Federal control act, the standard contract, and the final settlement agreement.

We submit that the judgment on the first branch of the case in No. 401 should be affirmed.

## ASSIGNMENT OF ERRORS BY READING COMPANY

APPELLANT IN No. 402

This appellant assigns the following errors by the Court of Claims in this case:

*First.* The court erred in dismissing the petition as to the items in the second branch of the case.

*Second.* The court erred in not rendering judgment in this appellant's favor for the additional sum of $2,426.86, the difference between the amounts stated by appellant in its original bills at Class A, Net Cash, rates, and afterwards restated without protest at Class D rates, with land-grant deductions.

*Third.* The court erred in not rendering judgment in this appellant's favor for the further additional sum of $4,564.06, difference between the amount allowed on the Class D rating and the amount due on the Class A, Net Cash, rating, on those bills (1-73, 77, 78 and 86-88-85-87-88-90) found to have been originally stated by plaintiff on the Class D basis.

## STATEMENT OF FACTS AND ARGUMENT ON FOREGOING ASSIGNMENTS

### SUMMARY OF ARGUMENT

1. Consideration of the facts on which the second and third assignments are based.

2. Disbursing officer's allowances or settlements did not remain undisturbed.

3. The Baltimore and Ohio and the Oregon and Washington decisions do not apply in law or in fact.

4. The decisions in the above cases are not even primarily applicable to this case.

5. There was an agreement for reduction of rates effective January 1, 1917, but no agreement was made thereafter for reduction.

6. Class D (Emigrant Moveable) classification is inapplicable.

7. Appellant in No. 402 is entitled to recover for the transportation of the miscellaneous impedimenta on the "Net Cash" classification.

8. This second branch of the case is not within the terms of the final settlement agreement.

## ARGUMENT

This second branch of the case covers the bills that were stated or restated on the Class D (Emigrant Moveables) basis and were afterwards paid without objection or protest by this appellant (R. foot p. 29).

We shall now state the facts and discuss the law.

1. The items making up the amount named in the second assignment are among the items stated in Finding X (R. 16, 17). Specifically they are as follows:

Bill 6629-30-31 for $1,018.50, restated at $657.65, a difference of $360.85;

Bill 79-80-82-83 for $1,950.60, restated at $633.01, a difference of $360.85;

Bill 81 for $423.90, restated at $194.93, a difference of $228.97;

Bill 84 for $499.53, restated at $255.57, a difference of $243.96;

Bill 93-103, inclusive, for $1,271.70, restated at $741.21, a difference of $530.49.

These are the bills covered by the sentence at the end of Finding X (R. 17) in the words:

> "The difference between the amounts stated by plaintiff in its original bills at Class A, Net Cash, rates

on military impedimenta, $4,909.23 and afterwards restated by plaintiff without protest, at Class D rates, with land grant deductions, $242.37, amounts to $2,426.86."

It will be noted that in Finding X (R. 16, 17), in describing the several bills above named, the court finds that each was so restated on the basis of Class D with land grant deduction, and the restated amount was paid by the disbursing officer. All those bills are put in the same category by the court.

The court followed this by finding (Finding XI, R. 17) that all restated bills referred to Finding X "were paid as restated by the disbursing officer to the Director General of Railroads beginning February 4, 1918, and ending June 14, 1918, pursuant to General Order No. 17, and were credited on the Railroad Administration books to the account 'Individuals and Companies,' and were not credited to the plaintiff."

General Order No. 17 is Appendix A (R. 30).

These restated items are of those described in the opinion (R. 27) where the court said the petition also claims "additional amounts which it is alleged the disbursing quartermaster deducted from its bills as if the shipments had consisted of emigrant movables under current rulings of the comptroller." So these bills are in the second of the "two general classes of claims" described in the opinion (R. 29).

2. The third assignment of error is that the court erred in not rendering judgment in this appellant's favor for the additional sum of $4,564.06, a difference over and above the amount allowed and paid, that was due on the cars of military impedimenta covered by bills 1-73, 77, 78 and 86-88-85-87-88-90, described in Finding X.

We shall now present those bills in their order, as described in Finding X (R. 16, 17).

(a) Bill 1-73 as originally stated was corrected and re-

stated by appellant at $18,835.92, but $85.60, feeding charges, was stricken out by someone, and the bill was paid by the disbursing officer in the sum of $18,750.32. "The classification of the military impedimenta in the original bill and the restated bill was the same and no part of the difference between the amounts stated in the original and restated bill was due to *a change* from Class A, Net Cash, to Class D" (R. 16).

We submit that it follows that the original and restated bills were on the Class D basis, for otherwise the disbursing officer would not have made the payment. He was following the ruling of the comptroller as to rates on military impedimenta, as the findings show.

(b) Bill 77 was originally stated at $3,482.06 and was restated and corrected in the sum of $2,134.66 and that sum was paid by the disbursing officer. "No part of the difference in amount between the original and corrected bill was due to change from Class A, Net Cash, to Class D, with land grant deduction on military impedimenta."

We submit that it follows that the bill was on the Class D basis, or the disbursing officer would not have made the payment, for he was following the ruling of the comptroller as to the rate on military impedimenta, as above stated.

(c) Bill 78 was originally stated in the sum of $179.40 on the "basis of Class D on military impedimenta with land-grant deduction, and was paid in that amount by the disbursing officer."

We submit that it follows that the bill was thus stated because of the disbursing officer's attitude in applying the decision of the comptroller, as stated above.

(d) Bills 86-88-85-87-90 were originally stated in the sum of $1,482.42 "on the basis of Class D military impedimenta, with land-grant deduction, in which amount it was paid by the disbursing officer."

We submit that if they had not been stated in that way the disbursing officer would not have made payment, for his attitude was as we have stated above.

All three of these assignments of error relate to the refusal of the Court of Claims to render judgment in this appellant's favor for the difference between the amounts due and allowed by the judgment on the Class D (Emigrant Moveables) basis and the amounts due on the basis of the correct classification for the transportation of miscellaneous military impedimenta. The second and third assignments are but particulars of the first, and all the assignments can be presented together conveniently.

DISBURSING OFFICER'S ALLOWANCES OR SETTLEMENTS DID NOT REMAIN UNDISTURBED.

We submit that the disbursing officer's allowances or settlements once made did not remain *undisturbed,* for it is shown by Finding XI (R. 17) that at one time the auditor for the War Department disallowed the disbursing officer's payments and caused a deduction of $10,853.71; and by Finding XIII (R. 18) that at another time the disbursing officer's payments were suspended and a deduction of $3,382.33 was made to adjust the payments on these bills to the basis of an allowance of one cat free for every 25 men.

So, even if appellant would have been bound by the original settlements with the disbursing officer, it certainly cannot be said to be bound when those settlements were overturned and something else substituted in lieu thereof, to which it had never agreed.

BALTIMORE AND OHIO AND OREGON AND WASHINGTON DECISIONS DO NOT APPLY.

The effect of the judgment of dismissal is to force upon this appellant the settlements once made on an admittedly erroneous basis, settlements which the Government itself had repudiated, and to dismiss appellant's demand for judgment on the correct basis. All this on the lower court's theory that the case is governed by the decision in the *Baltimore & Ohio case,* 52 C. Cls. 468, and by the decision

in the *Oregon-Washington Ry. & Navigation Co. case*, 255 U. S. 339.

We submit that the cases above named do not apply to this case, are not relevant to it, but if we are mistaken in that, the facts of this case take it out of the operation of the rule laid down in those decisions. So clear is it that we are correct in the alternative that it is submitted we might well rest our appeal on that ground alone; but we argue the inapplicability of the decisions relied upon by the Court of Claims, we hoping for a ruling by this court which will dispel some confusion now existing in the Court of Claims decisions, and so relieve this court of future petitions for writs of certiorari.

In reversing the Court of Claims in *St. Louis, Brownsville & Mexico Ry. Co.* v. *United States*, decided April 27, 1925 (No. 310, October Term, 1925), this court covered pretty much the same ground we now ask it to review—the only difference between the two cases being that in the *St. Louis, Brownsville & Mexico case* the bills were arbitrarily reduced by the disbursing or accounting officers without protest by plaintiff, while in this case the bills were either reduced by the carrier without protest, and to meet the attitude of the disbursing officer, to the basis upon which he could make payment, or else were originally so stated by claimant for the same reason.

THE BALTIMORE AND OHIO AND OREGON-WASHINGTON DECISIONS ARE NOT EVEN PRIMARILY APPLICABLE.

In those cases, the carriers, after claiming and receiving the proper tariff classifications (the lack of which is the basis of this appellant's complaint), and the proper tariff rates, deemed that, outside of and beyond any question of rates and classifications, the Government was entitled to the right to land-grant deductions. In this they were mistaken but, nevertheless, for many years without interruption, they rendered their bills and accepted payment on

that basis without protest or objection. They misconstrued the law against themselves and, no question of tariff rates or classifications being involved, the Court of Claims and this court held that they could not recover the deductions (or reductions) which they had always conceded and never claimed.

But the instant case is quite different. Here the carrier stated its bills on what it claimed to be the proper classification, and was induced by the attitude of the disbursing officer to restate them on the basis of a classification on which he was authorized by the Comptroller's rulings to make payment, or else, *for the same reason*, it originally stated its bills on that same basis, one which the Court of Claims has frequently held erroneous. The appellant here simply began or ended by claiming from the United States, in its final bills, less than it was entitled to, just as the carriers did in the cases of *Pitts. C. C. & St. L. Ry. Co. v. Fink*, 250 U. S. 577, and *N. Y. C. & H. R. R. Co. v. York & Whitney Co.*, 256 U. S. 406, wherein this court held that carriers were not barred from recovering the lawful rate merely because of having first demanded, received and accepted less than was due them. In the instant case, there was not present any of the elements of accord and satisfaction, the Government took all, the carrier nothing, simply receiving payment from the disbursing officer of less than was due on the proper tariff basis.

THERE WAS AN AGREEMENT FOR REDUCTION OF RATES EFFECTIVE JANUARY 1, 1917, BUT NO AGREEMENT MADE THEREAFTER FOR REDUCTION.

1. By Section 22 of the Act of March 2, 1889 (25 Stat. 862, Ch. 381), it is enacted, "That nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States * * *." Accordingly, prior to January 1, 1917, this appellant and all the other lines parties to the interterritorial military

arrangements, which became effective that date, were parties to agreements, known as "military agreements," between the carriers and the War and Navy Departments, which were for the most part similar to and superseded by the later arrangements (Finding V, R. 12). That finding sets forth the essential terms of that "military arrangement," and Finding VI shows why and how the Comptroller and the Secretary of War approved it. Finding VII shows that it was in full force and effect as late as May 20, 1920, that its provisions have been observed by carriers generally, and that under it the Government has paid for transportation at rates substantially 5 per centum less than it otherwise would have paid. See also Finding VIII.

Thus there was a reduction by agreement of rates given to the Government, effective January 1, 1917, and remaining in force as late as May 20, 1920. We submit that no additional reduction of rates could be put on this appellant by the ruling or action of the accounting officers, although such additional reduction might have been made by agreement at or before the making of a shipment. *There is no such agreement in this case.* On the contrary, Finding VIII (R. 14) shows that "The troops were transported on *regular transportation requests* at rates substantially 5 per cent less than the regular tariff rates, and the Army impedimenta was moved as freight on *bills of lading* issued by the Government." (Italics not in original.)

The Government, in executing its "transportation requests" and "bills of lading" could have made a particular classification or proposed lower rates, and if there had followed an acceptance by the carrier affirmatively, or by making the movements without objection, a lawful agreement would have been reached. *There is no such agreement in this record.* On the contrary, Finding VIII shows that the regular order prevailed.

We submit that it did not lie in the power of the account-

ing officers, *after the movements had been completed and the bills presented,* to require a further reduction in the absence of a previous agreement in one form or another.

2. We have found no case holding that carriers, having no such agreement with the United States, are less entitled to recover their proper charges from the Government than from any other shipper. So to hold would be to hold that there was something in the nature of sanctity pertaining to Government payments, whether right or wrong. As a matter of fact, they should be less sacred than settlements by private parties. It is a matter of common knowledge that the government does business with carriers on credit; its settlements with them are based upon rulings of its own officials and frequently are long delayed; it always has its records to defend it against the subsequent assertion of claims; the transportation charges it has to pay make no difference in its business. On the other hand, it is a matter of common knowledge that private parties pay cash on delivery of their goods, and they pay according to carriers' demands; frequently they keep no records; and always the transportation charges are an element in their cost of living, or doing business, or in the price of their goods for sale. There was much more equitable reason to declare the carrier estopped in the *Fink case,* where its original voluntary demand was satisfied, than to declare it estopped in this case where its original demand was either reduced, or was originally stated, according to the attitude and limitations of the authority of the agent the Government had established to deal with its bills, *but not to make contracts.*

We respectfully submit that this court should hold that a carrier, by merely understating its claim against the Government in applying the wrong rate or classification is not thereby or thereafter estopped to claim the correct rate or classification by failing to make a protest. In other words, we submit that the Government should be held to be as

much subject to the carriers' lawful classification and rates as any other shipper. Such a ruling by this court will in no wise limit the authority of its *Oregon and Washington* decision, nor negative the view that, because the Government may by an agreement be the beneficiary of lesser rates than the ordinary shipper, a carrier may be estopped by an accord and satisfaction in its dealings with the Government.

THE FACTS OF THIS CASE TAKE IT OUT OF THE RULE LAID DOWN IN THE BALTIMORE & OHIO AND OREGON & WASHINGTON CASES, EVEN IF THEY WERE PRIMARILY APPLICABLE.

What we have to say now relates both to the bills found to have been originally stated on the Class A, Net Cash, basis and then restated on the Emigrant Moveables (Class D) basis, and to those found to have been originally stated on the latter basis. It may be that the restated bills will afford a point for discussion merely because they were originally claimed on the Class A, Net Cash, basis, but we submit that in the last analysis it makes no difference—for this appellant's right to recover on the correct classification basis on those bills found to have been originally stated on the erroneous basis is just as clear as it is on the restated bills.

We submit that we have shown that the *Baltimore & Ohio and Oregon & Washington* decisions have no relevancy to this case; but, as we have also submitted, even if we were mistaken about that, the facts of this case take it out of the operation of the rule in the cases referred to.

The only theory upon which the *Baltimore & Ohio and Oregon & Washington* decisions could be authoritative here would be that the disbursing officer's settlements, once made, were final and remained undisturbed. But they were not final here, nor did they remain undisturbed, as we have said before. It is shown by Findings XI (R. 17) and XIII (R. 18) that the Auditor for the War Department

suspended the disbursing officer's payments and made deductions to adjust them to the basis of an allowance of one car free for every 25 men, repudiating and overturning the settlements and *recapturing the money that had been paid*. Certainly, in these circumstances, this appellant is free to sue for what it regards as its rightful due. In other words, even if appellant would have been bound by the original settlements with the disbursing officer, it certanly cannot be said to be bound when those settlements were overturned.

We submit that the decisions cited by the Court of Claims have no bearing on this case, regardless of how the original bills were stated, and this appellant should recover upon the basis of the correct classifications.

THE CLASS D (EMIGRANT MOVEABLES) CLASSIFICATION INAPPLICABLE.

It is not thought that it will be claimed by the Government in this case that the Emigrant Moveables classification is applicable, since the Court of Claims in numerous cases has held against that classification in judgments rendered wthout opinions, which have been accepted by the Government without appeal. However, we point to the description of the term "Emigrant Moveables" quoted from the classifications on page 15 of the Record, and we refer to the fact that this miscellaneous military impedimenta was not and could not be in fact "Emigrant Moveables." It may be well, also, to point out that it is evident that the transportation of emigrant moveables is done in the ordinary freight service, while here freight went with the troops (Finding VIII, R. 6). The difference in such service would be sufficient to relieve the impedimenta of the character of "Emigrant Moveables" even if that classification might otherwise be imposed upon it by analogy.

The "Emigrant Moveables" classification, the one to which this appellant was held by the court's judgment (R.

29) being inapplicable, and plaintiff being entitled to recover upon the correct classification basis, it remains to determine what the correct classification is.

THIS APPELLANT IS ENTITLED TO RECOVER FOR THE TRANSPORTATION OF THE MISCELLANEOUS IMPEDIMENTA UPON THE BASIS OF THE "NET CASH" (THAT IS, BULK) CLASSIFICATION.

It wil be observed that Finding IX (R. 14, 15), finds that at the time of this transportation plaintiff's tariff classifications contained the following classifications:

1. "Classifications for the different articles composing said shipment";
2. The "Emigrant's Moveables" classification;
3. "Camp Equipage; minimum weight 30,000 pounds, Carloads, Class A (Net Cash)."

The "Emigrant's Moveables" classification being inapplicable for the reasons heretofore stated, and it not being found that the Government's shipping officers specified the contents of their shipments, we submit that the Class A, Net Cash (i. e., without land-grant deductions) classification is the only one applicable, as shown by the findings.

The army officers could have taken advantage of the ordinary classifications by weighing and describing the contents of their shipments just like any other shipper, so that carriers' charges could be definitely ascertained and stated accordingly, but it is not found that they did so.

"In respect to furnishing transportation, a railoard ordinarily bears to the Government the same relation that it does to a private person using its facilities." *St. Louis, Brownsville & Mexico Ry. Co.* v. *United States*, No. 310, October Term, 1924, decided April 27, 1925.

The Court of Claims sustained the application of the "Net Cash" classification in the cases of *Maine Central Railroad Company* and *Bush, Receiver of the Missouri Pacific Ry. Co.*, 56 C. C. 490, as is shown by the findings, not printed. There were no opinions in those cases.

It is not apparent in this case that the Court of Claims intended to recede from its judgments in the above cited cases. Rather, it appears that, being impressed with the idea that the claim for the difference between the "Emigrant's Moveables" classification rates and the "Net Cash" rates was subject to the doctrine of the *Baltimore and Ohio* and *Oregon and Washington* decisions, the court dismissed this second branch of the case on that ground alone.

## THE SECOND BRANCH OF THE CASE IS NOT WITHIN THE FINAL SETTLEMENT AGREEMENT.

We submit that the services were rendered and the bills presented before Federal control, and so they are not within the terms of the Federal control act, or the standard contracts, or the final settlement agreement, a subject discussed in a previous part of this brief.

Finally, we submit that the judgment on the second branch of this case, No. 402, should be reversed and the court below be instructed to render an additional judgment in favor of this appellant in the sum of $2,482.37 (foot of Finding X, R. 17), and for such additional amount on the items covered by the third assignment of error as the evidence may establish. The amount stated in that assignment, $4,564.06, is our view of the amount due after considering the evidence before the trial court, over and above the amount allowed and paid, that was due on the cars of military impedimenta covered by the bills we have enumerated.

## CONCLUSIONS

Our conclusions are these:

1. The judgment of the court below in the sum of $14,236.04 should be affirmed.

2. The judgment dismissing the second branch of the case should be reversed and the court directed to render

an additional judgment in this appellant's favor in the sum of $2,426.86.

3. The judgment dismissing the second branch of the case should be reversed and the court directed to render an additional judgment in this appellant's favor in the sum of $4,564.06, or such other amount as the evidence may justify.

Respectfully submitted,

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Wm. L. Kinter,
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*Of Counsel.*

Office Supreme Court, U.
FILED
NOV 19 1925
WM. R. STANSBURY
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1925.

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No. 401

THE UNITED STATES, *Appellant,*

*vs.*

READING COMPANY.

---

No. 402

READING COMPANY, *Appellant,*

*vs.*

THE UNITED STATES.

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APPEALS FROM THE COURT OF CLAIMS

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## BRIEF FOR READING COMPANY IN ANSWER TO GOVERNMENT BRIEF.

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F. CARTER POPE,
*Of Counsel.*

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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## APPEALS FROM THE COURT OF CLAIMS

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## BRIEF FOR READING COMPANY IN ANSWER TO BRIEF OF THE UNITED STATES.

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### SUMMARY OF ARGUMENTS.

1. The court below did not err in considering the final account of the final settlement, that account being the basis of the final settlement agreement.

2. In the absence of a special agreement for the transportation in question, it was the duty of the carrier to claim and enforce the payment of the tariff charges for the transportation service.

3. The law has placed it beyond the power of the carrier or the Government to deviate from the tariff charges applicable to the transportation service, and the final settlement account and agreement are not to be so construed as to violate the law.

## ARGUMENT.

### I.

*The court below did not err in considering the final account of the final settlement, that account being the basis of the final settlement agreement.*

On pages 16, 17 and 18 of the brief for the United States it is contended that the "so-called account of final settlement (R. 20) bears no date and on its face purports only to adjust claims to March 31, 1922", and that there is no finding that it had "any connection with or relation to the final settlement agreement. There is a period of three months—March 31 to June 30—which the so-called settlement account on its face does not cover". On those statements is based the Government's contention that the account should not have been considered in connection with the final settlement agreement.

We submit that opposing counsel are in error in contending that there is no finding that the account had "any connection with or relation to the final settlement". These are the opening words of Finding XV, "The final account of the final settlement between the Director General of Railroads and the plaintiff reads as follows:". So it was in fact the *final account* of that *final settlement*—an all important part of the final settlement—one agreed to by all the parties.

The account, near the beginning of Finding XV (R. 20),

states that it is a "Comparison of claims submitted by the Philadelphia and Reading Railway Company (now Reading Company) with books of the central administration adjusted to March 31, 1922." Evidently all parties had been preparing for the day when a final settlement agreement would be made, and an account was to and did form the basis of that agreement.

It stands to reason that the account was prepared after March 31st and was presented to the carrier before the final settlement agreement was signed June 30, 1922. It is to be noted particularly that the account (R. 21) shows a "net balance due from corporation" of $8,000,000, and that the Director General in the final settlement agreement (R. 22) acknowledged the payment of $8,000,000 in full satisfaction, etc. Thus the account and that agreement are in complete accord. The amount of $8,000,000 agreed upon and paid could not have been ascertained except by consideration of the account. All this means negotiations between the parties and an accord that found expression in the final settlement agreement. It stands to reason that the account was bodily present or in mind when the agreement was reached and signed, and that the huge payment was not agreed upon in a haphazard manner. It was not "taken out of the sky."

We submit that the court below did not err in considering that account in relation to the final settlement agreement (see last paragraph of Finding XV (R. 21) and the opinion (R. 29), for the account shows the claims that were asserted by all sides to the controversy and the amounts of the existing differences between the parties. It is apparent, therefore, that only those claims, demands and differences were canvassed in reaching the amount of $8,000,000 as the net balance due from the corporation. By agreeing upon the account and fixing that amount, the parties made that account a part of the final settlement agreement just as surely as if formal language had been used in the way of a recital setting forth the ac-

count *totidem verbis*, thus making applicable the familiar common law rule that where there are recitals of particular claims or considerations, followed by general words of release, the general words shall be restrained by the particular recital. *Texas Pac. Ry. Co. v. Dashiel*, 198 U. S. 521, 527; 2 Parsons on Contracts, 7th ed. foot p. 633, side p. 501, *note*, where many English and American cases are cited.

II.

*In the absence of a special agreement with the Government for the transportation in question, it was the duty of the carrier to claim and enforce the payment of the tariff charges for the transportation service.*

That rule of law makes inapplicable the entire argument presented in the brief for the United States, including the "release or receipt" cases quoted from on pages 18 to 28 inclusive. The only one of those cases that relates in any manner or form to transportation charges is *St. Louis, Brownsville & Mexico Ry. Co. v. United States*, 268 U. S. 169, *and there is no release in that case.*

In an action for the recovery of transportation charges the carrier is *sui generis*, as we expect to show in the following pages, for it is the legal duty and obligation of the carrier, in the absence of a special agreement, to claim and enforce the payment of the tariff charges for the services rendered. In such matters the carrier does not have the privilege or right to deviate, refund, remit, release, or abate the tariff charges, directly or indirectly, in any manner or form.

The carrier engaged in interstate traffic service is surrounded by statutory barriers that do not exist as to persons or corporations engaged in other business, hence it follows that many rules of law applicable to the latter do not apply to the carrier.

It was the duty of the carrier to claim and enforce the

payment of the tariff charges, not to deviate, release, refund, remit or rebate them in any manner or form.

Interstate Commerce Commission Conference Ruling 314 is as follows:

> "The law requires the carrier to collect and the party legally responsible to pay the lawful established rates without deviation therefrom. It follows that it is the duty of carriers to enforce their legal remedies in order to collect undercharges from the party or parties legally responsible therefor. It is not for the Commission, however, to determine in any case which party, consignor or consignee, is legally liable for the undercharges, that being a question determinable only by a Court, having jurisdiction and upon the facts of each case." (Superseding Rulings, 3 and 187. See also rulings 16 and 156 and Y. & M. V. R. Co. vs. Zemurray, 238 Fed. 789.)

That ruling is printed in 45 I. C. C. Rep. on p. 96 of the appendix. It is dated May 1, 1911, and is declarative of the duty of carriers to collect the established tariff rate by the enforcement of their legal remedies against the parties legally responsible, and it is a warning to them not to indulge in any other course in any manner or form whatever.

To preserve inflexibility and make rates unalterable was the effect and purpose of Conference Ruling 314.

April 5, 1915, this court decided the case of *Louis. & Nash. R. R. Co. v. Maxwell*, 237 U. S. 94. The action was to recover from Maxwell $58.30, as the amount of an alleged undercharge on the sale of railroad tickets to Maxwell. "The agent fixed the routing in the tickets and named the fare, and Maxwell paid without further question" (top of p. 97). The agent made a mistake in naming the amount of the fare, and the company sued for the undercharge. On p. 97 this court said:

> Under the Interstate Commerce Act, the rate of the carrier duly filed is the only lawful charge. Deviation

from it is not permitted upon any pretext. Shippers and travelers are charged with notice of it, and they as well as the carrier must abide by it, unless it is found by the Commission to be unreasonable. Ignorance or misquotation of rates is not an excuse for paying or charging either less or more than the rate filed. This rule is undeniably strict and it obviously may work hardship in some cases, but it embodies the policy which has been adopted by Congress in the regulation of interstate commerce in order to prevent unjust discrimination. The Act (Sec. 6) provides:

"Nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs."

That section is a part of Section 6 of the Hepburn Act of June 29, 1906, p. 587, ch. 3591, and it is still in force.

*Gartner on the Interstate Commerce Act*, 95, 97.

It is unlawful for a carrier to accept less than the tariff rate as compensation for the interstate transportation of property, and the shipper or consignee is liable for the full tariff rate.

*Pitts. C. C. & St. L. Ry. Co. vs. Fink*, 250 U. S. 577; *N. Y. C. & H. River R. R. Co. vs. York and Whitney Co.*, 156 U. S. 406.

**In the *Fink case*** the opinion was written by Mr. Justice Day, who said on page 580:

The facts are that the railroad company on September 13, 1910, delivered to Fink, the consignee, two boxes of Indian relics shipped to him at Dayton, Ohio,

> from Los Angeles, California, the waybill specifying charges in the sum of fifteen dollars, which sum Fink paid upon receipt of the goods. The tariff rates filed with the Interstate Commerce Commission so classified this merchandise that the transportation charges should have been thirty dollars instead of fifteen. It is for the difference that this action is prosecuted.

On page 581 it was held that the purpose of the Act to Regulate Interstate Commerce was to provide one rate for all shipments of like character, and to make the only legal charge for the transportation of goods in interstate commerce the rate duly filed with the Commission, thus avoiding discrimination and giving all like treatment, which is the main purpose of the Act to secure. Then Section 6 of the Act to Regulate Commerce was quoted, and it was said (p. 581):

> It was, therefore, unlawful for the carrier upon delivering the merchandise consigned to Fink to depart from the tariff rates filed. The statute made it unlawful for the carrier to receive compensation less than the sum fixed by the tariff rates duly filed. Fink, as well as the carrier, must be presumed to know the law, and to have understood that the rate charged could lawfully be only the one fixed by the tariff.

In the course of the opinion the *Maxwell case* was cited and applied. The *Fink case* was followed in the *York & Whitney Company* case and it was held that the consignee of the freight could not escape the liability imposed by law through *any contract with the carrier*. In the case at bar, the consignor and consignee was the United States.

Applying the decisions and the statute quoted, we submit that the carrier did not lose the right to recover here because it executed the release, and failed to object or protest when stating or restating its freight bills or their payment.

## III.

*The law has placed it beyond the power of the carrier or the Government to deviate from the tariff charges applicable to the transportation service, and the final settlement account and agreement are not to be so construed as to violate the law.*

We submit that the final settlement agreement is not to be so construed as to embrace either branch of this case, for the laws of the land entered into and became parts of that agreement.

In *Van Hoffman vs. City of Quincy,* 4 Wall., 535, 550, it was said:

> It is also settled that the laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. This principle embraces alike those which affect its validity, construction, discharge, and enforcement.

That language was quoted with approval in *Hendrickson vs. Apperson,* 245 U. S. 105, 112, and the rule has been applied in many cases. Among them are:

> *Walker vs. Whitehead,* 16 Wall., 314, 317;
> *Brine vs. Insurance Co.,* 96 U. S. 627, 637;
> *Barnitz vs. Beverly,* 163 U. S. 118, 127.

We now submit that to construe the final settlement agreement to mean that the Railway Company released its claim for charges on freight carried for the United States would make that agreement do what the statutes of the United States forbid.

The Hepburn Act of June 29, 1906 (34 Stat. 584, 587, ch. 5391, sec. 6) contains this language:

> No carrier unless otherwise provided by this Act, shall engage or participate in the transportation of

passengers or property, as defined in this Act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act; *nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified,* nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs; Provided, That wherever the word "carrier" occurs in this Act it shall be held to mean "common carrier."

The clauses we have italicized erect a legislative barrier against the construction put on the final settlement agreement by the Government in this case, and against the remitting or refunding in any manner or form any part of the rates and charges specified for carrying the freight. Language cannot be clearer or more positive.

The Congress did not stop with the legislation quoted, but at the foot of page 587 it enacted:

The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts, *or strictly to observe such tariffs until changed according to law,* shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than one thousand dollars nor more than twenty thousand dollars for each offense; *and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept or receive any rebate, concession, or discrimination* in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory thereof

*whereby any such property shall by any device whatever be transported at a less rate than that named, in the tariffs published and filed by such carrier,* as is required by said Act to regulate commerce and the Acts amendatory thereof, *or whereby any other advantage is given or discrimination is practiced.* Every person or corporation, whether carrier or shipper, who shall knowingly offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars: Provided, That any person, or any officer or director of any corporation subject to the provisions of this Act, or the Act to regulate commerce and the Acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court. (Italics not in original.)

That enactment not only makes it a misdemeanor for the corporation to willfully fail to strictly observe its published tariff, but also makes it a misdemeanor for any person or corporation to offer, grant, or give, or to solicit, accept or receive any rebate, concession or discrimination in respect of the transportation of property whereby it shall by any devices whatever, be transported at a less rate than that named in the published tariffs, or whereby any other advantage is given or discrimination is practiced.

That which is commanded, as well as that which is forbidden, is set forth in plain, broad and comprehensive language, leaving no loop-hole for escape, and clearly covering the transaction here involved if the Government construction of the final settlement agreement be correct.

The enactment last quoted is a part of an amendment of section 1 of the Act of February 19, 1903 (32 Stat. 847 Sec.

708) known as the Elkins Act. That Act did not prescribe imprisonment as a punishment, an omission which was corrected in the Hepburn Act, as we have shown; otherwise this part of the Hepburn Act is a re-enactment of section 1 of the Elkins Act.

We submit the construction of the agreement that we are contending for makes it harmonize with the law of the land, "For it is a rule of interpretation that where a contract is fairly open to two constructions, by one of which it would be lawful and the other unlawful, the former must be adopted."

*Hobbs vs. McLean,* 117 U. S. 567, and cases there cited.

Respectfully submitted,

L. T. Michener,
*Attorney for Reading Company.*

Wm. L. Kinter,
F. Carter Pope,
*Of Counsel.*

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1925.

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No. 404.

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THE UNITED STATES, *Appellant,*

*vs.*

THE ST. LOUIS, BROWNSVILLE & MEXICO RAILWAY COMPANY.

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## APPEAL FROM THE COURT OF CLAIMS.

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## BRIEF FOR THE APPELLEE.

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### THE OPINION OF THE COURT OF CLAIMS.

With the findings of fact the Court of Claims filed simply a memorandum as follows:

> "See Reading Company, No. 34747, 60 C. Cls.—; Southern Railway Co., No. B-118, 60 C. Cls.—; and New York, New Haven & Hartford R. R. Co., No. B-44, 60 C. Cls.—." (R. 15)

### GROUNDS OF JURISDICTION.

The final judgment in the present case was entered on January 5, 1925. The appeal was allowed April 13, 1925.

The appeal was taken under sections 242 and 243 of the Judicial Code. (R. 27-28)

## STATEMENT OF THE CASE.

After the submission of this case in the Court of Claims an order was made referring it and certain other cases (all of which are now before this court, consolidated and set down for argument together) to a special commissioner to ascertain and report the facts. Thereafter, the special commissioner filed his reports and proposed findings of fact in all the cases mentioned. They were re-submitted October 29, 1924. On January 5, 1925, the court announced its decision approving and adopting the findings of fact reported by the special commissioner, and entered judgment in each case for the plaintiff. (R. 7, 8, 14)

From the findings of fact we take the following statement of the case. (R. 8-14)

In 1916 and 1917 the railway company, in cooperation with other carriers, carried on Government bills of lading, as freight, numerous shipments of camp equipment and military impedimenta, the property of the United States, including wagons, guns, limbers, horses, kitchen outfits, ammunition, forage, and miscellaneous property of similar character.

For the said transportation the railway company, as the final and delivering carrier, presented its bills based on the lawfully published tariff rates less land-grant deductions. The disbursing officer made certain payments, including, on account of the bills involved in this case, the sum of $15,143.91.

Later, the Auditor for the War Department, in auditing the disbursing officer's accounts, disallowed the said payment of $15,143.91, because of a ruling of the Comptroller of the Treasury that the Government was entitled to the carriage of one carload of military impedimenta free with every twenty-five soldiers carried as passengers, under certain provisions of the passenger tariffs.

In the meantime, the railroads were taken over by the Government, on January 1, 1918, and remained under Federal control until March 1, 1920.

Inasmuch as there were no current accounts between the railway *company* and the Government at the time when the Auditor for the War Department made his disallowance, it was necessary to find some way to get the money back into the Treasury if the disallowance was to be made effective. The Auditor for the War Department adopted the method of deducting the amount in question *from money due the United States Railroad Administration* on account of transportation service during Federal control. (R. 11.) It was obviously a recovery from the Railroad Administration of the overpayment claimed to have been made to the railway company, leaving to the Railroad Administration the task of getting the money from the railway company.

The amount so deducted from the Federal bills was carried in an account entitled "Corporate Transactions" in accordance with the provisions of General Order No. 17. (R. 11, 15-16.) After the termination of Federal control, in accordance with General Order No. 66, the amount so deducted, $15,143.91, was charged against the railway company by the Railroad Administration, and by the railway company was credited to the Railroad Administration and charged against the War Department to await action by the Auditor or the Court of Claims. (R. 11, 18-25)

July 29, 1921, the railway company and the Director General of Railroads entered into a final settlement contract, the material parts of which are copied in the findings of fact. (R. 14.)

## ARGUMENT.

It was conceded in the Court of Claims that the disallowance by the Auditor for the War Department was wrong. *Missouri Pacific Railroad Co. vs. United States,* 56 Ct. Cls. 341. See also the opinion of this Court in *St. L. B. & M. Ry. Co. vs. United States,* 268 U. S. 169, 173.

The sole question for decision is the right of the railway company, *having suffered the loss as a result of the disallowance by the Auditor and the recovery of the money into the Treasury through the instrumentality of the Railroad Administration,* to recover by suit in the Court of Claims.

1. THE RAILWAY COMPANY'S CAUSE OF ACTION.

Admittedly the railway company performed service for the War Department for which it has been paid $15,143.91, *less than it should have been paid.* The payment which was made at once by the Army disbursing officer was subsequently disallowed and recovered into the Treasury, and the railway company was left with nothing but a "claim" which now the Government seeks to defeat. The findings show that that result was reached through the acts of two departments of the Government. First, the Auditor for the War Department disallowed the original payment (wrongly, as is now admitted). Second, the Railroad Administration, another department of the government, allowed the Auditor for the War Department to use it (the Railroad Administration) as an instrument by which the amount in question could be recovered from the railway company. The findings show that the amount in question was so taken from the railway company, not through any act of its own, but through the act of the Auditor for the War Department, aided by the intervention of the Railroad Administration.

It is inconceivable that under such circumstances the railway company cannot recover from the United States the compensation lawfully due it for the service rendered. It may recover on the theory that the recovery by the Government of the money originally paid, by means of the disallowance and deduction made by the Auditor for the War Department and the charging back made by the Railroad Administration, was improper and erroneous (which is ad-

mitted), and there is necessarily an implied contract to repay to the railway company the amount so recovered and withheld from it.

Or the suit may be regarded as a cause of action on the transportation service performed by the railway company for which payment was originally made in full, but later withdrawn in the manner described. Admittedly, the Government has not paid for the service and the railway company has suffered the loss. Certainly it may be said, therefore, that the money is still due the railway company for the transportation service rendered.

Or, third, the suit may be regarded as an equitable claim, in the nature of an equitable assignment. Of equitable claims "for damages" or for money judgments, the court has jurisdiction under section 145 of the Judicial Code.

"Sec. 145. The Court of Claims shall have jurisdiction to hear and determine the following matters:

> "First, All claims * * * or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty, if the United States were suable. * * * "

2. THE SETTLEMENT OF JULY 29, 1921, AS A DEFENSE.

The suit is defended on the ground that the settlement of July 29, 1921, between the railway company and the Director General of Railroads, is a bar to the railway company's right to recover, that is, that it has released the United States from liability.

In the agreement of July 29, 1921, the railway company acknowledges the payment of money by the Director General in full satisfaction of all claims, etc., "against the Director General, or anyone representing or claiming to represent the Director General, the United States, or the President, growing out of or connected with the possession,

use and operation of the Companies' property by the United States during the period of Federal control, * * *." (R. 14)

The claim of the railway company *in this case* is not a claim against the Director General. The findings show that it never has been a claim against the Director General, but is and has always been a claim *against the War Department on account of transportation service performed prior to Federal control.* The Director General was concerned only to the extent that the deduction was erroneously made by the Auditor from money credited to him (the Director General) and that he (the Director General) charged it against the railway company and was given credit therefor and was later fully reimbursed.

The settlement of July 29, 1921, was based upon a statement of account between the Director General and the railway company, which is quoted in Finding IX. (R. 13.) That statement of account shows that there was no dispute between the parties as to the amount due on the account Corporate Transactions, which included the sum of $15,143.91 representing the deductions made by the Auditor for the War Department. Both the Director General and the company agreed that the sum of $1,024,167.83, shown in the account Corporate Transactions as due from the company to the Director General, was correct, and in the final settlement that account was paid in full by the company to the Director General. It is clear, therefore, that the sum of $15,143.91, which was included in the total balance of $1,024,167.93 in the account Corporate Transactions, was actually reimbursed and paid to the Director General, and that the loss of $15,143.91 from revenue earned by the company in 1916 and 1917 and carried on its books as a charge against the War Department, *is an actual loss.*

The claim here in suit has never been a claim against the Director General, but always a claim against the War Department and has been so charged on the railway company's

books, both *before* and *after* the final settlement with the Director General.

It is not a claim growing out of the possession, use and operation of the railway company's property during Federal control, for the same reasons. It is a claim for an unpaid balance due for transportation furnished in 1916 and 1917, prior to Federal control. The manner in which the disallowances made by the Auditor were made effective and were finally charged against the railway company cannot change the essential fact that the claim in this case is for *an unpaid balance due for transportation furnished in 1916 and 1917.*

Respectfully submitted,

ALEX. BRITTON,
LAWRENCE H. CAKE,
*Counsel for Appellee.*

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BALTIMORE AND OHIO RAILROAD COMPANY
TROOP AND IMPEDIMENTA CASES
PRIOR TO FEDERAL CONTROL.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1925.

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**No. 499**

**THE UNITED STATES**

*vs.*

**BALTIMORE AND OHIO RAILROAD COMPANY.**

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**No. 500**

**THE UNITED STATES**

*vs.*

**BALTIMORE AND OHIO RAILROAD COMPANY.**

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APPEALS FROM THE COURT OF CLAIMS.

---

## BRIEF FOR APPELLEE.

---

GEORGE E. HAMILTON,
JOHN F. McCARRON,
*Attorneys for Appellee.*

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1925.

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## No. 499

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THE UNITED STATES, Appellant,

*vs.*

BALTIMORE AND OHIO RAILROAD COMPANY.

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APPEAL FROM THE COURT OF CLAIMS.

---

## BRIEF FOR APPELLEE.

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### Statement.

This case is here on appeal by the United States from the Court of Claims.

The Court of Claims, on February 16, 1925, entered its judgment in favor of appellee in the amount of $16,588.13, mentioned in its finding ten (Rec. p. 13), and the sum of $2,208.55, mentioned in its finding twelve (Rec. p. 14), a

total of $18,796.68. The appellant concedes that the sum of $2,208.55 is proper and does not resist said item (Appellant's Brief p. 95). The questions, therefore, for determination by the court in this case are whether any errors of law have been made by the Court of Claims in granting judgment to appellee in the amount of $16,588.13, mentioned in the lower court's finding ten, and also in its application of the law to finding nine.

It will be noted that the Court of Claims found in part in finding eight the following:

> "At different times during the years 1916 and 1917, beginning in June, 1916, and ending in December, 1917, the plaintiff and its connecting carriers transported over its respective lines, upon Government transportation requests, numerous movements of United States troops. For this service the plaintiff, as initial carrier, presented its bills, based on net per capita fares obtained by combinations only on the western gateways specified in the interterritorial arrangements of 1916 and 1917, to the proper disbursing officer."
>
> (Rec. p. 12.)

The Court of Claims found in part in finding ten that:

> "The Auditor for the War Department in auditing the accounts of said disbursing officer disallowed as overpayments by him of plaintiff's said bills amounts aggregating $20,978.45, and these amounts were deducted at different times from March 12, 1920, to September 17, 1920, inclusive, from bills of the Railroad Administration by the Auditor. Of the said deductions amounts aggregating $16,588.13 were obtained by routing so as to make combinations on

points not authorized by the interterritorial military arrangements of 1916 and 1917."

(Rec. p. 13.)

Finding nine made by the Court of Claims is very pertinent to this statement and is as follows:

"The bill No. 32293 T/R 20383 was rendered for $3,721.39, and upon refusal of the disbursing officer to pay it was restated at $3,705.94, a difference of $15.45, in which amount it was paid and received by plaintiff without protest on June 12, 1917. Bill No. 33076 T/R 61787 was rendered for $7,782.97, based on a net per capita fare of $26.03, and upon refusal of the disbursing officer to pay it was restated at $7,343.44 by plaintiff, based on a net per capita fare of $24.56, in which amount it was paid on March 25, 1918, to the Director General of Railroads and received without protest. The plaintiff presented a supplemental bill No. 33076-A to the Auditor for the War Department for the difference between the net fares of $25.87, $7,735.13, and the net fares of $24.56, $7,343.44, a difference of $391.69, which was disallowed by the auditor on July 24, 1918, without protest by plaintiff. Bill No. 34295 T/R 354992, was rendered for $4,655.56, based on a net per capita fare of $25.58, and upon refusal by the disbursing officer to pay it plaintiff restated it at $4,469.92 based on a net *per capita* fare of $24.56, in which amount it was paid to the Director General of Railroads on April 1, 1918, and received by him without protest. The plaintiff filed a supplemental bill for the amount dropped in the restatement, $185.64, with the auditor, who disallowed same on October 9, 1918, without protest from plaintiff.

"Bill No. 34078 (T/Rs 34460, 344543, 344347, and 344541) was rendered by plaintiff for $14,919.98 and was paid by the disbursing officer to the Director General of Railroads in full as presented on April 16, 1918. On March 25, 1919, plaintiff presented a supplemental bill, No. 34078-A, to the auditor for $16,759.80, a difference of $1,839.82, which was disallowed by him without protest from plaintiff on April 23, 1919."

(Rec. pp. 12-13.)

In finding thirteen, the Court of Claims found:

"Of the amount deducted by the auditor from Railroad Administration bills at different times from March 12, 1920, to September 17, 1920, $20,978.45, the sum of $13.58 was refunded by plaintiff to the War Department on July 7, 1919, and the sum of $20,939.52 was charged back to plaintiff by the Railroad Administration in December, 1921, through the account 'Federal assets collected' and $25.35 was charged back to plaintiff by the Railroad Administration through the account 'Corporate transactions.'"

(Rec. p. 14.)

The Court of Claims in finding fourteen also found in part:

"In December, 1921, the plaintiff paid the amount charged back to plaintiff through the account 'Federal assets collected' $20,939.52 into the 'trustee fund' to credit of the Railroad Administration, and charged the same on its books in a suspense account against the War Department."

"The trustee account was created by General Order No. 68, issued February 24, 1920, to take effect at the

termination of Federal control, at 12 o'clock midnight, February 29, 1920. By this order the different railroads that had been under Federal control were made trustees of the United States Railroad Administration to collect all of its unpaid bills and to pay all of its outstanding liabilities and generally to wind up all of its unfinished transportation business. All Federal cash pertaining to the transportation business was turned over to the railroads to be carried in this account. Any moneys erroneously paid into the trustee account by deposit in the banks where such accounts were kept could be withdrawn by a railroad company making such deposits with the consent of the Director General of Railroads."

(Rec. p. 14.)

The Court of Claims found in part in finding fifteen:

"The sum of $25.35 deducted from a Railroad Administration bill on August 14, 1918, on account of alleged overpayment by the disbursing officer of corporate bill before Federal control and charged back to the plaintiff in December, 1921, through the account 'Corporate transactions' by the Railroad Administration was paid to said Railroad Administration by plaintiff in the final settlement of July 27, 1922, through said account 'Corporate transactions.' "

"The act of February 28, 1920 (41 Stat. 456, 457), provided for the termination of Federal control on February 24, 1920, General Order No. 66, effective February 29, 1920, was issued by the United States Railroad Administration for the purpose of outlining the method to be followed in the separation of the accounts of the Railroad Administration and the different railroads under its control when the railroads

should be returned to their owners, which provided among other things that:

"'Sec. 5. (*a*) * * * If during the period of Federal operations amounts representing overcharge freight claims paid out of Federal funds, affecting traffic, the revenues from which were included in corporation revenue or credited to it as lay-over revenue on the Federal books, or amounts representing loss and damage claims paid out of Federal funds, chargeable to the period prior to Federal control, were carried on the Federal books in suspense accounts pending adjustment thereof with other carrier corporations, or pending receipt of additional information wherewith to dispose of the amounts carried, and such amounts are carried in suspense account as of February 29, 1920, they shall be charged to the corporation. Such amounts shall on the Federal books be charged to the account '(Name of corporation)—Corporate transactions,' and on the corporate books should be charged to an appropriate suspense account and credited to the account 'U. S. Government—Corporate transactions.'"

(Rec. p. 15.)

In finding seventeen the Court of Claims found in part that "On August 26, 1920, the Comptroller of the Railroad Administration issued, with the approval of the Director General of Railroads, accounting circular 152," and the pertinent part of said circular for the purposes of this statement is:

"Unpaid bills carried in the Federal accounts against the War Department, for transportation service performed prior to Federal control, shall not be closed into the account 'War Department transporta-

> tion charges,' but instead shall be charged to the corporation through the account '(Name of corporation)—Corporate transactions.' Such charges against the corporation, when reported on settlement statement Form AC-510, shall be allocated to the quarter in which the corporation was originally credited with the amount, or bill was stated in the accounts."
>
> (Rec. pp. 16-17.)

In the final settlement agreement of July 27, 1922, between the director general and the Baltimore and Ohio Railroad Company, the Court of Claims set forth the material parts of said final settlement agreement, a portion of same being as follows:

> "The purpose and effect of this instrument is to evidence a complete and final settlement of all demands, of every kind and character, as between the parties hereto, growing out of the Federal control of railroads, *save and except that the following matters are not included in this adjustment and are not affected thereby:*
>
> *'Exceptions.*
>
> * * * * * * *
>
> " '2. This settlement does not include or affect any moneys or assets of the director general turned over to the companies, or any of them, pursuant to General Order No. 68, the account created by this order to be adjusted as though this agreement had not been made.' " (Italics ours.)
>
> (Rec. pp. 15-16.)

The Memorandum of the Court of Claims holds in part:

> "1. The several items claimed, as set forth in Finding IX, are not recoverable where the bills were rendered to disbursing officers and payments by him were received. (See Oregon-Washington R. & N. Co., 255 U. S. 339; 54 C. Cls. 131; Baltimore & Ohio Railroad Company case, 52 C. Cls. 468.)
>
> "3. The auditor's deductions, aggregating $16,588.13 (Finding X), obtained by routing or making combinations on points not authorized by the interterritorial military arrangements were erroneous. (See Atchison, Topeka & Santa Fe Railroad Company case, 256 U. S. 205.)"
>
> (Rec. pp. 17-18.)

## ARGUMENT.

### Questions for Determination.

The questions for determination by the court are as to whether any errors of law have been made by the Court of Claims in its application of the law to its findings of fact made in this case. This argument shall therefore be addressed to a review of the record and as to whether any errors of law have been made by the court below.

### Findings of Fact in Nature of Special Verdict.

This court has repeatedly held that the findings of fact made by the Court of Claims are to be treated like the verdict of a jury. Mr. Justice Pitney, in the case of Brothers *vs.* United States, in 250 U. S. 88, said:

> "For the purposes of our review the findings of that court are to be treated like the verdict of a jury,

> and we are not at liberty to refer to the evidence, any more than to the opinion, for the purpose of eking out, controlling, or modifying their scope. United States *v.* Smith, 94 U. S. 214, 218, 24 L. ed. 115; Stone *v.* United States, 164 U. S. 380, 382, 41 L. ed. 477, 478, 17 Sup. Ct. Rep. 71; District of Columbia *v.* Barnes, 197 U. S. 146, 150, 49 L. ed. 699, 700, 25 Sup. Ct. Rep. 401; Crocker *v.* United States, 240 U. S. 74, 78, 60 L. ed. 533, 536, 36 Sup. Ct. Rep. 245, and cases cited."

It will, therefore, be seen that the findings of fact made by the Court of Claims are binding upon the parties. No question has been raised by appellant to any of the findings.

**No Assignment of Errors made by Appellant in this Case.**

The appellant has contented itself with making certain alleged assignment of errors in the Reading case (Appellant's Brief, p. 9), but no assignment of errors are made by it in this case. At page 101 of its brief, it makes this statement: "This case is companion to the foregoing cases. The judgment should be reversed to the extent of $16,588.13." For what reason or reasons should the judgment in this case be reversed "to the extent of $16,588.13"? We contend that appellant has utterly failed to make a showing in that regard. As stated heretofore, the parties are bound by the findings of the Court of Claims; therefore we are unable to see wherein the appellant has pointed out any errors of law patent on the face of the record as affecting the amount of $16,588.13.

**This Case Not Affected by Final Settlement Agreement of July 27, 1922.**

The Final Settlement Agreement of July 27, 1922, made between the Director General and the Baltimore and Ohio Railroad Company, very clearly states under "Exceptions":

> "'2. This settlement does not include or affect any moneys or assets of the director general turned over to the companies, or any of them, pursuant to General Order No. 68, the account created by this order to be adjusted as though this agreement had not been made.'"
>
> (Rec. p. 16.)

It will be seen from the foregoing that the trustee account is specifically exempted from the Final Settlement Agreement of July 27, 1922. The Court of Claims states in its finding fifteen how the trustee account of the Director General was created, for it found:

> "The trustee account was created by General Order No. 68, issued February 24, 1920, to take effect at the termination of Federal control, at 12 o'clock midnight, February 29, 1920. By this order the different railroads that had been under Federal control were made trustees of the United States Railroad Administration to collect all of its unpaid bills and to pay all of its outstanding liabilities and generally to wind up all of its unfinished transportation business. All Federal cash pertaining to the transportation business was turned over to the railroads to be carried in this account. Any moneys erroneously paid into the trustee account by deposit in the banks where such accounts

were kept could be withdrawn by a railroad company making such deposits with the consent of the Director General of Railroads."

(Rec. p. 14.)

The Baltimore and Ohio Railroad Company corporation was charged with the sum of $20,939.52 by the Railroad Administration through the account "Federal assets collected" in December 1921 (Rec. p. 14, finding 13), and in December, 1921, the Baltimore and Ohio paid the amount charged back to it through the account "Federal assets collected" $20,939.52 into the "trustee fund" "to credit of the Railroad Administration and charged the same on its books in a suspense account against the War Department" (Rec. p. 14, finding 14). In December, 1921, the sum of $25.35 was charged back to plaintiff by the Railroad Administration through the account "Corporate transactions" and the said amount of $25.35 deducted from a Railroad Administration bill on August 14, 1918, on account of alleged overpayment by disbursing officer of corporate bill before Federal control was paid to the Railroad Administration in final settlement of July 27, 1922, through said account "Corporate transactions" (Rec. pp. 14-15). The Court of Claims held that the "several items claimed, as set forth in Finding IX, are not recoverable where the bills were rendered to disbursing officers and payments by him were received" on the authority of "Oregon-Washington R. & N. Co., 255 U. S. 339; 54 C. Cls. 131; Baltimore & Ohio Railroad Company, 52 C. Cls. 468" (Rec. pp. 17-18), and allowed $16,588.13 in its finding 10 on the ground that:

> "3. The auditor's deductions, aggregating $16,588.13 (Finding X), obtained by routing or making combinations on points not authorized by the interterritorial military arrangements were erroneous. (See Atchison, Topeka & Sante Fe Railroad Company case, 256 U. S. 205.)"

The findings of the Court of Claims conclusively show that the transaction herein between the Railroad Administration and the Baltimore and Ohio Railroad Company of the charge back of the $20,939.52 to the corporation by the Railroad Administration and the payment of the said amount of $20,939.52 by the Baltimore and Ohio Railroad Company to the Railroad Administration was clearly outside the Final Settlement Agreement of July 27, 1922, for the instrument specifically states:

> "save and except that the following matters are not included in this adjustment and are not affected thereby,"

and then, under the "Exceptions," the trustee account of the Director General, under General Order No. 68, is excepted from the final settlement.

(Rec. p. 16, finding 16.)

The court will further note that the amount of $20,939.52 was paid by the Baltimore and Ohio Railroad Company into the "trustee fund" of the Director General in December, 1921 (Rec. p. 14), whereas the Final Settlement Agreement between the Baltimore and Ohio Railroad Company and the Director General was of July 27, 1922 (Rec. p. 15), which further shows it was outside the provisions of the final

settlement providing "full satisfaction and discharge of all claims, rights and demands of every kind and character."

**An Error of Law as to Finding Nine.**

We hold that the Court of Claims erred in denying recovery of the total amount of $2,432.60 in its finding nine. There is no disagreement by appellee with the facts in said finding. It would appear, however, that appellee is also entitled to the amount of $2,432.60, and that the case of Oregon-Washington R. & N. Co., 255 U. S. 339, is not applicable to the facts in said finding. The Court of Claims found that no protest had been filed at the time of payment of the several bills therein and cited the decision of this court in the Oregon-Washington R. & N. Co. case, *supra,* as a bar to recovery.

In finding nine, it is shown that because of the refusal of the disbursing officers to pay said bills as first rendered appellee restated them in different amounts, and no protest was made by appellee at the time of payment. Certain supplemental bills were presented by appellee to the auditor but were disallowed by him without protest from appellee. Appellee in the lower court insisted on payments of these aggregate amounts, totaling $2,432.60, and no question is raised against them except that of protest. We think that finding nine presents the exact question as to protest as determined by this court in St. Louis, Brownsville & Mexico Railway Company, appt., *vs.* United States, decided April 27, 1925, wherein the court said:

> "The Government did not establish the affirmative defense of acquiescence by showing merely acceptance without protest. To hold that such acceptance

> barred the right to recover the balance wrongly withheld was to give it an effect in judicial proceedings similar to that which it had within the executive department under the Dockery Act. See Lancaster *v.* United States, 57 Ct. Cl. 284. For such a rule there is no support either in the legislation of Congress or in the decisions of this court. Compare Clyde *v.* United States, 13 Wall. 38, 20 L. ed. 479. The railway was entitled to judgment for the amount wrongly deducted by the Auditor."

The appellant, in its brief (Rec. p. 94), states:

> "The Court of Claims held that deductions made by the Auditor to the extent of $4,390.32 were proper and no cross-appeal was taken by Baltimore & Ohio. No question arises as to them."

It is true that the appellee took no cross-appeal in this case, but the appeal of the Government brought the entire record before this court for review. That review, as this court has stated, is confined to a review of the findings of the lower court as to whether any errors of law have been made by the lower court. It was stated in United States *vs.* Smith, in 94 U. S. 214, referring to findings of the Court of Claims:

> "This finding is conclusive, unless impeached for some error in law appearing in the record."

Appellee contends that, as the record of the case is in this court, it may call to the court's attention any errors of law patent on the record. That is all it is seeking to do when it states that under the decision of this court in St. Louis, Brownsville & Mexico Railway Company, *supra,* an error of

law is apparent as to finding nine of the Court of Claims, and therefore it should have judgment for the additional amount of $2,432.60 by reason of the facts set forth in finding nine.

**Erroneous and Illegal Action of the Auditor for the War Department.**

The Court of Claims has found that the appellee is entitled to recover $16,588.13 (Finding X, Rec. p. 13), and that:

> "3. The Auditor's deductions, aggregating $16,588.13 (Finding X), obtained by routing or making combinations on points not authorized by the interterritorial military arrangements were erroneous. (See Atchison, Topeka & Santa Fe Railroad Company case, 256 U. S. 205.)"
>
> (Rec. p. 18.)

In other words, the Auditor for the War Department had no legal authority to make a deduction from the Director General's bills, but, having done so, the Director General charged the same to the Baltimore & Ohio Railroad Company through the account "Federal Assets Collected" because he did not concede that the deduction should be made from his bills, as the amount involved arose under corporate control and prior to Federal control, and therefore the amount taken by the Auditor for the War Department was the same as though it had been directly taken from the appellee as the appellee paid the amount to the Railroad Administration that had been charged back to it. The Director General happened to be the medium through which the charge-back

deduction was made, and he is only incidental to the main issue involved in this suit.

What was said in part by the Court of Claims in Southern Railway Company *vs.* the United States, No. B-118, C. Cl., decided January 5, 1925, page 13, applies to the facts of the instant case:

> "Plaintiff's services in transporting troops and property of the United States prior to the taking possession and control of railroads by the Government did not grow out of and was not an incident to Federal control, nor were the deductions that were made from these bills as rendered incidents to or matters growing out of Federal control."

The findings show that appellee has been given judgment for an amount of money for services rendered by it to the War Department prior to Federal control. It was held in Dupont *vs.* Davis, 264 U. S. 460-462, that:

> "Moneys and other property derived from the operation of the carriers during Federal control, as we have seen, are the property of the United States."

From the foregoing, it is clearly seen that this court gave emphasis only to "Moneys and other property derived from the operation of carriers during Federal control," which carries with it the exclusion of moneys and other property derived from operation of the carriers prior to Federal control.

**No Case in Point.**

We have been unable to find in appellant's brief any case in point with the instant case, that prohibits a recovery by appellee on the findings made by the Court of Claims in this case.

**Conclusion.**

The judgment of the Court of Claims should be affirmed as to the amount of $18,796.68 and the additional amount of $2,432.60, which, under the decision of this court in St. Louis, Brownsville & Mexico Railway Company, *supra,* is due under finding nine and should be allowed appellee, and the judgment of the Court of Claims as to finding nine should be reversed.

Very respectfully,

GEORGE E. HAMILTON,
JOHN F. McCARRON,
*Attorneys for Appellee.*

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1925.

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## No. 500

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**THE UNITED STATES, Appellant,**

*vs.*

**BALTIMORE AND OHIO RAILROAD COMPANY.**

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APPEAL FROM THE COURT OF CLAIMS.

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## BRIEF FOR APPELLEE.

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### Statement.

This case, like No. 499, is here on appeal by the United States from the Court of Claims.

The Court of Claims, on February 16, 1925, entered its judgment in favor of appellee in the amount of $6,315.45, mentioned in its finding ten (Rec. pp. 9-10-11), and the sum of $735.68, mentioned in its finding nine (Rec. pp. 9-11), a total of $7,051.13. The appellant concedes that the sum of $735.68 is proper and does not resist said item (Appellant's Brief, p. 101). The sole question, therefore, for determination by the court in this case is whether an error

of law has been made by the Court of Claims in granting judgment to appellee in the amount of $6,315.45, mentioned in the lower court's finding ten.

The Court of Claims found in part in finding ten that:

> "At various times during the years 1916 and 1917 the plaintiff and its connecting carriers transported United States troops with accompanying military impedimenta to terminal points on plaintiff's lines. The troops were moved on Government transportation requests and the military impendimenta on Government bills of lading as freight. For such services the plaintiff presented its corporate bills Nos. 34216D, 34854, 32815, 33808, 33206, 3485-A, 34871, 34009, and 34872, amounting to $8,074.63, to the proper disbursing quartermaster for payment. These bills were paid by the disbursing officer as presented. Nos. 33206, for $273.88, was paid on November 1, 1917, and 34216, for $463.20, was paid on December 26, 1917 (a total of $737.08), to the plaintiff; the remaining bills, amounting to $7,337.55, were paid by said disbursing officer from January 7, 1918, to July 16, 1918, inclusive, to the United States Railroad Administration and credited by the Director General to the plaintiff through the account 'B. & O. R. R. Co.—Assets 12/31/17 collected,' as provided by General Order No. 17. The accounting officers in auditing the accounts of the said disbursing officer disallowed $6,315.45 as overpayment by him on said corporate bills, and from Railroad Administration bills Nos. 812-1901, 96-1274, 88-1147, 98-1175, 94-1487, 98-1094, 98-1154, 97-1142, 88-1392, deducted from March 12, 1920, to July 16, 1920, said $6,315.45. Of this amount the whole payment to plaintiff on the corporate bills, $737.08, were deducted as overpayments and the balance, $5,578.37, was deducted on account of alleged overpayments to the Railroad

Administration on corporate bills. The amount so deducted from Railroad Administration bills, $6,315.45, was charged on its books in an appropriate account against the plaintiff, which in turn credited said amount on its books to the Railroad Administration and charged the same in a suspense account against the War Department to await action by the auditor or the Court of Claims. During December, 1921, the plaintiff paid the amount so deducted, $6,315.45, into its trustee account to the credit of the Director General of Railroads.

(Rec. pp. 9-10.)

The court also found in finding eleven in part that:

"The trustee account was created by General Order No. 68, issued February 24, 1920, to take effect at the termination of Federal control, at 12 o'clock midnight, February 29, 1920. By this order the different railroads that had been under Federal control were made trustees of the United States Railroad Administration to collect all of its unpaid bills and to pay all of its outstanding liabilities, and generally to wind up all of its unfinished transportation business. All Federal cash pertaining to the transportation business was turned over to the railroads to be carried in this account. Any moneys erroneously paid into the trustee account by deposit in a bank where such account was kept could be withdrawn by a railroad company making such deposit, with the consent of the Director General of Railroads."

(Rec. p. 10.)

In finding twelve the Court of Claims found in part:

"There was a final settlement agreement entered into between the plaintiff and the Director General of Railroads, dated July 27, 1922, by the second excep-

tion to which the items contained in the trustee account were excepted as follows: 'This settlement does not include or affect any moneys or assets of the Director General turned over to the company pursuant to General Order No. 68, the account created by this order to be adjusted as though this agreement had not been made.' "

(Rec. p. 10.)

## ARGUMENT.

### The Sole Question.

There is only one question for determination by the court in this case, and that is, "Has the Court of Claims erred in its application of the law to its findings of fact made in this case?" We contend that the lower court has not erred.

We respectfully submit that our argument in No. 499 applies with equal force here, in that finding ten shows that the services rendered by appellee for transporting troops and property was prior to Federal control of the railroads and "did not grow out of and was not an incident to Federal control, nor were the deductions that were made from these bills as rendered incidents to or matters growing out of Federal control."

### Conclusion.

The judgment of the Court of Claims should be affirmed.

Very respectfully,

GEORGE E. HAMILTON,
JOHN F. McCARRON,
*Attorneys for Appellee.*

IN THE

# Supreme Court of the United States

*October Term, 1925.*

PERE MARQUETTE RAILWAY COMPANY,
*Appellant,*
*v.*
THE UNITED STATES,
*Appellee.*
No. 499.

*Appeal from the Court of Claims.*

## BRIEF OF BENJAMIN CARTER AS *AMICUS CURIAE.*

The brief of the Government, appellee in this case, as originally printed and filed is rested mainly on the case of the *Louisville & Nashville Railroad Company*, No. 33–A at the Court of Claims; a liberal quotation being made from the opinion which accompanied a decision rendered therein on November 5, 1923. There can be no doubt that Government counsel supposed that this was the final decision and opinion in that case. In reality there were two re-hearings after this decision and on April 6, 1925, there was, in the matter here concerned, a new decision, with a conclusion of law, in favor of the claimant. This mistake being brought to the attention of Government counsel, they since have inserted in the brief a rider which merely states the change of the decision. Jus-

tice can hardly be done to the Pere Marquette case if this court does not know precisely what occurred in the Louisville & Nashville case. It is to be assumed that the facts are substantially the same in the two cases, and the Louisville & Nashville case would in truth be an authority at the Court of Claims for a decision in favor of the Pere Marquette company if its case were open there.

The basis of the cancelled opinion in the Louisville & Nashville case was in paragraph VII of the findings of fact and the conclusion of law then made, as follows:

> "Bills 5815–10 for $657.63, 5815–11 for $1,845.07, 5815–12 for $4,488.59, 5995–100 for $5,369.50 and 6127–14 for $2,487.94 were presented to a disbursing officer for payment and plaintiff was paid thereon the full sum of $14,848.63. In settlement of the disbursing officer's accounts the auditor applied the free baggage-car rule referred to in Finding V and called upon plaintiff to refund said sum of $14,848.63, which plaintiff refused to do. Thereafter, and after plaintiff's railroad had been taken over and was being operated by the United States, the auditor deducted said amount from certain several bills of the United States Railroad Administration, not otherwise involved herein. The Railroad Administration was thereupon given credit on the corporate books for said sum of $14,848.63 and a charge was set up against the United States in the various amounts deducted, aggregating said sum, said amounts being identified by the numbers of the Railroad Administration's bills from which the deductions were made. Whether such entries were made by direction of the Railroad Administration or by the railroad's representatives does not appear.
>
> "The amount which plaintiff was entitled to be paid on its said bills paid in the aggregate sum of $14,848.63 was $13,173.71.

"On the facts found the court concludes:

"1. That as to the bills referred to in Finding VII the plaintiff is not entitled to recover. * * *

The real facts, as stated in the new findings, with the conclusion of law, are as follows:

"Bills Nos. 5815–10 for $657.63, 5815–11 for $1,845.07, 5815–12 for $4,488.59, 5850–26½ for $64.07, 5995–100 for $5,369.40, and 6127–14 for $2,487.94, aggregating $14,912.70, were paid by a disbursing officer as billed by plaintiff. The remaining bills as unpaid claims were forwarded by the disbursing officer to the Auditor for the War Department for direct settlement. The total of $5,433.47 claimed on bills Nos. 5850–26½ and 5995–100 was paid directly to plaintiff prior to January 1, 1918, when the Government took control of the railroads, and the total of $9,479.23 claimed on the remaining bills was paid directly to the Director General of Railroads as plaintiff's agent during the period of such Federal control. The Auditor for the War Department took exceptions to the payments which had been made by the disbursing officer on the above bills for the reason that military impedimenta, camp equipage, etc., should have been transported free of charge on basis of one carload free for each 25 men in the movement. The disbursing officer called upon plaintiff to refund $14,848.63 on account of said sums so held to have been improperly paid, which plaintiff refused to do; and thereafter, and after plaintiff's railroad had been taken and was being operated by the United States, the auditor deducted said amount from certain several bills of the United States Railroad Administration not otherwise involved herein.

"Of said sums so deducted the plaintiff was entitled to be paid $13,173.71

"XI. Upon the institution of Federal control of railroads the Director General, under authority

vested in him by the act of Congress approved March 21, 1918 (40 Stat. 451), and in pursuance of instructions and notices issued by the War and Treasury Departments and by himself, and by agreement with plaintiff in a form prescribed by him, took into possession, beside plaintiff's physical properties, cash in hands of its station agents, and its uncollected bills for services which it had rendered to the date of commencement of said control; and thereafter said Director General, to the extent herein narrated, collected such bills as plaintiff had against the United States for transportation performed and paid such charges as were due from plaintiff to the United States.

"XII. During the Federal control of railroads the Director General, in the operation of plaintiff's lines, performed much service over said lines for the War Department, for which his bills were duly rendered. Before settlement for such services the Auditor for the War Department deducted from the bills of the Director General various sums to the aggregate amount of $14,912.70, being the amounts set out in Finding VII, held to have been wrongfully paid under the free baggage car rule. The department was given credit at the time payments were made on the Director General's books for the amount paid on his bills, and the amounts unpaid by reason of said deductions remained a charge on his books against the department. In August, 1920, a settlement for services rendered was held as between the Auditor for the War Department and the Director General of Railroads and a large sum was paid the Director General, but the disallowance of said amounts paid on plaintiff's bills as aforesaid still stood and that amount was not included in said settlement.

"XIII. In June, 1920, the plaintiff, in keeping the Director General's books of account, charged itself in the amount of $7,857.34 in account styled L. & N. Railroad Company—Federal

assets collected, on account of deductions described which had been made from bills of the Director General. In December, 1920, the plaintiff, in an account styled 'L. & N. Railroad Company—Corporate Transactions,' charged itself in the amount of $6,991.21 on account of said deductions made from bills of the Director General as recited, and in settlement subsequently had between the plaintiff and the Director General the Director General received the benefit of said charge. In a settlement had as of December 31, 1921, between the plaintiff and the Director General, relating to plaintiff's trustee account, it was found that there was due the Director General the sum of $41,910.42, which the plaintiff, on March 22, 1922, paid into said trustee account. Said sum so paid included said sum of $7,857.34.

"XIV. On March 7, 1922, plaintiff and the Director General entered into a final settlement agreement in writing, pursuant to which the Director General paid the plaintiff a lump sum of $7,000,000—'in full satisfaction and discharge of all claims, rights, and demands of every kind and character, which the said company now has or hereafter may have or claim against the Director General, or any one representing or claiming to represent the Director General, the United States, or the President, growing out of or connected with the possession, use, and operation of the company's property by the United States during the period of Federal control, or out of the contract between the parties dated the 14th day of March, 1919."

Such final settlement agreement also provided:

"The purpose and effect of this instrument is to evidence a complete and final settlement of all demands, of every kind and character as between the parties hereto, growing out of the Federal control of railroads, save and except that the follow-

ing matters are not included in this adjustment and are not affected thereby. *Exceptions:*

"1. The obligation on the part of the company as expressed in the standard form of contract between the Director General and the company, as to the conduct of litigation arising out of Federal control (except as to claims and suits of carriers against the Director General of the United States), as is stated in paragraph (*f*) of section 9 of said contract, is to continue and is not affected by this settlement.

"2. This settlement does not include nor affect any moneys or assets of the Director General turned over to the company pursuant to General Order No. 68, the account created by this order to be adjusted as though this agreement had not been made.

"3. This settlement does not include the obligations of the Director General, assumed in paragraphs (*i*) and (*j*) of section 4 of said contract, to save the company harmless as to claims, if any, of third persons, or the obligations of the Director General in respect to the payment of taxes under section 6 of the contract.

"4. This settlement does not affect nor alter any obligation executed by the company for amounts loaned, advanced, or funded by the Director General, or amounts due by reason of any equipment trust agreements, all such obligations on the part of the company to remain in full force, the same as if this agreement had not been entered into."

"*Conclusion of Law*—On the facts found the court concludes as matter of law that the plaintiff is entitled to recover the following sums: Under Finding VII, $13,173.71; under Finding VIII, $1,099.98; under Finding IX, $12,957.24; and under Finding X, $3,937.74, a total of $31,-168.67.

> "It is therefore adjudged that the plaintiff do have and recover of and from the United States the sum of thirty-one thousand one hundred sixty-eight dollars and sixty-seven cents ($31,168.67)."

Counsel for the Pere Marquete company in their brief mention the Louisville & Nashville case and the Reading case and, in reference to the Reading case alone say:

> "This case was promptly appealed, but in cases involving the same question, motions for new trial were filed and were argued and finally a number of such cases were referred to a special commissioner for the taking of additional evidence and the reporting of tentative findings of fact. Those cases were finally re-submitted to the court, October 29, 1924, on findings of fact reported to the special commissioner. January 5, 1925, the court announced its decision approving and adopting the findings of fact reported by the special commissioner, and entered judgment in each case for the plaintiff. In the following cases appeals were taken by the United States, and thereafter, at the last term, this court granted motions to advance and to consolidate for hearing with the present case: No. 401 *United States* vs. *Reading Company;* No. 402 *Reading Company* vs. *United States* (cross-appeal); No. 403 *United States* vs. *Southern Railway Company;* No. 404 *United States* vs. *St. L. B. & M. Railway Company.*"

Counsel do not say here, and could not have said, that the Louisville & Nashville case was referred to the special commissioner or that findings were adopted and a judgment entered on January 5, 1925, or that appeal was taken by the Government. None of these things happened in that case.

The Louisville & Nashville case is peculiar in the respect of the time consumed in getting the judgment

favorable to the claimant; to which fact mainly the mistake made by the Government's brief in the Pere Marquette case is to be charged. By reason of complexities in the evidence, of necessary interchange of proofs and briefs between cases and of a stubborn but unsuccessful fight made by the Government's attorney on a question of rates, the third submission of the case did not occur until after the trustee had remitted to the Treasurer of the Railroad Administration the amounts due it as reimbursement, which the carriers had paid into the trustee account. That argument resulted in the findings, judgment and opinion of April 6, 1925. These latter were made final on October 6 following, when another motion of the Government for a new trial, and a motion of the claimant for some slight amendment of the findings, were over-ruled.

The fact of the turn-over by the trustees to the Director General's Treasurer appears in the last brief of Government's counsel, filed on February 24, 1925.

The judgments in the cases of this group were rendered at different times between December, 1923, and April, 1925. Naturally, as time passed, and as the views of the Court of Claims were indicated, the narratives of fact on which the court acted when making its findings and rendering judgment were more extended and included more of detail in some of the cases than in others. But the sum of every case is this:

*In the spring of 1918, under express law (40 Stat. 25 ch. 451 p.) and by standard contracts, in elaborate form the Government rented for its use the properties of the carriers, and it controlled and operated the same thereafter until February 29, 1920. In the spring of 1922, after careful scrutiny and agreement, a standard form of settlement was had under which the Government paid to the carriers the net amounts of its liabilities incurred in such*

*"possession, use, and operation" of the company's property by the United States during the period of Federal control.*

*During such Federal control the Comptroller General, on revision of paid bills of the carriers, relative to transportation performed before said take-over by the Government, reached the conclusion that there were over-payments in some of them. Separate accounts of these items were kept in forms dictated by the Government, during and after Federal control, and under requirements of the Government the carriers refunded to the Government the balances ascertained.*

*So the carriers, before Federal control, performed transportation for the Government to the amounts found by the Court of Claims, and they have not been paid for the same. All else is immaterial.*

BENJAMIN CARTER,
*Amicus Curiae.*